

CHAPTER 451. SECURITIES, REAL ESTATE, AND DEBT MANAGEMENT

MICHIGAN CORPORATION AND SECURITIES COMMISSION

Act 13 of 1935

AN ACT to create a commission to be known as the Michigan corporation and securities commission; to define the powers and duties thereof; to provide for the transfer to said commission of certain powers and duties now vested by law in the Michigan securities commission and the secretary of state, and to abolish the Michigan securities commission.

History: 1935, Act 13, Eff. Sept. 21, 1935.

The People of the State of Michigan enact:

451.1 Michigan corporation and securities commission; creation; commissioner, term, disqualification; seal; offices.

Sec. 1. A commission to be known and designated as the Michigan corporation and securities commission is hereby created. Immediately upon the taking effect of this act a corporation and securities commissioner shall be appointed by the governor for the term of 4 years, subject to confirmation by the senate. The said commissioner shall devote his entire time in the performance of the duties of his office. Upon the expiration of the said term a successor shall be appointed in like manner for a term of 4 years and until his successor is appointed and qualified. Vacancies shall be filled in the same manner as is provided for the appointment in the first instance. Said commissioner shall not be directly or indirectly interested in any corporation, firm or association engaged in the business of underwriting, issuing or selling securities of any character. The commission shall adopt and have a suitable seal, of which all courts of the state shall take judicial notice, and all proceedings, orders and decrees shall be authenticated thereby. It shall be the duty of the board of state auditors to provide suitable offices, supplies, and equipment in Lansing, Michigan, and in such other place or places in the state as may be determined upon by the commissioner and governor; expenses thereof to be audited, allowed and paid in such manner as is or may be provided by law for the payment of necessary state expenses.

History: 1935, Act 13, Eff. Sept. 21, 1935;—CL 1948, 451.1.

Compiler's note: For transfer of powers and duties of the corporation and securities commission from the department of commerce to the director of the department of consumer and industry services, and abolishment of the commission, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

451.2 Corporation and securities commission; powers; employees, salary; fees.

Sec. 2. Said commissioner shall have the power to appoint not more than 3 deputy commissioners, who shall have the power and authority to conduct hearings in the several matters submitted to the commissioner for his determination, and to make report of such evidence as may be submitted to them, together with their conclusions and recommendations, to the commissioner for his action, and shall likewise have power and authority to perform such other duties as may be delegated to them by the commissioner. The commission shall have power to appoint a secretary and such clerks, assistants, examiners, and other employees as shall be necessary for the proper exercise of the powers hereby granted. The commissioner, each deputy commissioner and the secretary shall receive such annual salary as shall be appropriated by the legislature, payable in the same manner as are the salaries of other state officials. The salaries of clerks, assistants, examiners and other employees, shall be fixed and determined by the commissioner, subject to the approval of the director of finance. The commissioner, deputies and other employees of the commission shall be entitled to reasonable expenses while traveling in the performance of any of the duties hereby imposed. All salaries and expenses authorized hereunder shall be paid out of the state treasury in the same manner as the salaries of other state officers and employees are paid. Any appropriation made for the Michigan securities commission, or for the secretary of state, insofar as the corporation division thereof is concerned, together with any sums receivable by said Michigan securities commission under any act or acts under which said commission has existed and functioned, or receivable by the secretary of state incident to the operation of the corporation laws of the state of Michigan, shall be paid into the general fund of the state of Michigan. For furnishing photostatic or typewritten or other copies of records or proceedings of the commission or of documents and papers required or permitted by law to be filed with the commission, and for certifying same, the commission shall charge in accordance with a schedule of fees which it shall adopt with the approval of the state administrative board, which schedule of fees may be changed or amended by the commission with the approval of the state administrative board: Provided, however, that a minimum charge of \$1.00 shall be made for each certificate.

History: 1935, Act 13, Eff. Sept. 21, 1935;—Am. 1939, Act 228, Imd. Eff. June 14, 1939;—CL 1948, 451.2.

451.3 Michigan securities commission; abolition, transfer of powers and duties to corporation and securities commission; records; fees, taxes and charges.

Sec. 3. The powers and duties now vested by law in the Michigan securities commission, by virtue of the provisions of Act No. 220, Public Acts of 1923, and the acts amendatory thereof and supplemental thereto, and that conferred under and by virtue of the provisions of Act No. 306, Public Acts of 1919, and the powers and duties now vested by law in the secretary of state, with respect to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, are hereby transferred to and vested in the Michigan corporation and securities commission hereby created. Immediately on the taking effect of this act the Michigan securities commission, whose powers and duties are hereby transferred, shall cease to exist and the tenure of the office of the members thereof shall be at once terminated, and whenever reference thereto is made in any law of the state; or to the secretary of state with reference to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, reference shall be deemed to be intended to be made to the Michigan corporation and securities commission. All hearings, matters and proceedings of whatever nature now pending before the Michigan securities commission, or the secretary of state, with reference to the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, shall not be terminated or abated, but shall be transferred to the Michigan corporation and securities commission created hereby, and shall be carried on in the same manner and subject to the same incidents as though such transfer were not made. All records, files and other papers belonging to the Michigan securities commission, or to the secretary of state respecting the formation, organization, regulation and control of corporations, and the fees, taxes and charges to be paid by corporations, under Act No. 327, Public Acts of 1931, as amended, and Act No. 85, Public Acts of 1921, as amended, the duties of which are hereby transferred to the Michigan corporation and securities commission, shall be turned over to said commission and shall be continued as part of the records and files thereof.

History: 1935, Act 13, Eff. Sept. 21, 1935;—CL 1948, 451.3.

Compiler's note: Act 220 of 1923, referred to in this section, was repealed by Act 265 of 1964. For provisions of Act 306 of 1919, referred to in this section, see § 451.201 et seq.; Act 327 of 1931, see § 450.1 et seq.; and Act 85 of 1921, see § 450.301 et seq.

451.4 Corporation and securities commission; review of orders; injunctions.

Sec. 4. Any final order of said commission shall be subject to review in the manner now provided by law for reviewing orders of the Michigan securities commission. In no case, however, shall any injunction or other order issue, suspending or staying any order of the commission, except after due notice to the commission and reasonable opportunity for hearing thereon.

History: 1935, Act 13, Eff. Sept. 21, 1935;—CL 1948, 451.4.

BLUE SKY LAW Act 220 of 1923

451.101-451.133 Repealed. 1964, Act 265, Eff. Jan. 1, 1965.

REAL ESTATE BROKERS AND SALESMEN Act 306 of 1919

451.201-451.219 Repealed. 1980, Act 299, Imd. Eff. Oct. 21, 1980.

REAL ESTATE BONDS AND SECURITIES

Act 275 of 1937

AN ACT to provide for the keeping of records of real estate bonds and other real estate securities, to require reports and other information relative to real estate bonds and other real estate securities in default, and the filing of such information with the public trust commission, and to provide for the giving of information relative to such defaulted obligations, by all persons, firms, associations or corporations acting as trustees, depositories or fiscal agents or in any other capacity in which funds may be received for the retirement of real estate bonds, notes, debentures, certificates of participation, or other like real estate securities, or for the payment of interest thereon.

History: 1937, Act 275, Imd. Eff. July 22, 1937.

The People of the State of Michigan enact:

451.251 Real estate bonds and securities; records; duties of fiduciaries; report to public trust commission, contents; authority of commission.

Sec. 1. All persons, firms, associations or corporations acting as trustees or depositories or fiscal agents or in any other capacity in which funds may be received for the retirement of real estate bonds or other real estate securities, or for the payment of interest thereon, shall keep an accurate record of all transactions in connection therewith, which record shall be open to examination when bonds are in default by the public trust commission or its duly authorized representative or representatives, and, in case of a default in principal or interest payments upon any such obligation, shall make a report thereof to the said public trust commission, setting forth such information as it may have of the number and face value of the bonds or securities originally issued, the number and face value of the bonds or securities outstanding, the cash on hand for application thereon, the extent of default or deficiency in funds for retirement of principal and interest, the period of time for which such real estate bonds or securities were issued, a description of the lands which constitute the security for the payment of said obligations sufficient to identify the same, and, upon demand of the public trust commission, any other information pertinent to the default upon such obligations or the possibility of payment thereon, and shall also, upon demand of the public trust commission, furnish like and further information as and when the same may be required by the said public trust commission. The public trust commission is hereby given express authority to demand that any and all additional information necessary for the performance of its duties be included or given to supplement, at any time, any report required hereby. Upon receiving such demand the trustee, depository or fiscal agent shall, within the time specified therein, furnish to the said public trust commission such of said requested information as may then be available to said trustee, depository or fiscal agent. Every such report and such additional information shall be in writing and sworn to by the persons or by the owner or 1 of the owners, if a partnership or unincorporated association, or by any officer having knowledge of the facts if a corporation acting as trustee, depository, fiscal agent or in any other capacity as above set forth.

History: 1937, Act 275, Imd. Eff. July 22, 1937;—CL 1948, 451.251.

451.252 Real estate bonds and securities; failure to file reports or give information; authority of attorney general, procedure, requirement; taxable costs.

Sec. 2. Upon the failure or refusal of any person, firm, association or corporation to file reports or give information required by this act, the attorney general upon the relation of said public trust commission, may file a verified petition in the proper circuit court in chancery praying for the production of any and all records or other information relative to any such obligation in default and for permission to examine any person or persons in relation thereto, and the court may thereupon enter an order directing the production of any and all records, papers, documents or other information and the appearance of any person or persons to be examined on a day to be fixed by the court: Provided, however, That no action as herein provided shall be taken by the attorney general except upon request of said public trust commission and unless and until there shall have been deposited with said public trust commission an amount of money by the holder or holders of such obligations sufficient to meet all expenses in connection with such proceeding, the initiation of the proceeding and the amount of said deposit required to rest solely within the discretion of the attorney general and said public trust commission. The circuit court upon the conclusion of the hearing on such petition may tax the costs of said proceeding. Any and all proceedings by virtue of such petition, not otherwise prescribed herein, shall be in accordance with the usual chancery practice.

History: 1937, Act 275, Imd. Eff. July 22, 1937;—CL 1948, 451.252.

PROTECTIVE COMMITTEES

Act 89 of 1933

AN ACT to prevent fraud, deception and imposition in the solicitation within the state of Michigan of the deposit of bonds, notes, debentures and other evidences of indebtedness under, and/or the consent of the holders or owners of such securities, to a protective committee agreement, and to prevent fraud, deception and imposition in the operations and activities of protective committees organized within the state of Michigan to act for and in behalf of the holders or owners of such securities, and for such purposes to create a commission to regulate and supervise the establishment and the operations of protective committees, depositaries under protective committee agreements, and solicitors for protective committee agreements; to authorize said commission to have supervision over defaulted bonds, notes, debentures, certificates of participation and similar evidences of indebtedness; to prescribe the powers and duties of such commission; to license members of protective committees, depositaries under protective committee agreements and solicitors for protective committee agreements; to regulate and supervise and control the solicitation by anyone of bonds, notes, debentures and all other similar evidences of indebtedness, issued by the maker of any security for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness; to authorize such commission to act as custodian or receiver and appoint custodians, agents and managers of defaulted mortgage property under orders of court or otherwise; to prescribe penalties for violation of this act; and to repeal Act No. 37 of the Public Acts of the first extra session of 1932.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—Am. 1935, Act 218, Imd. Eff. June 8, 1935.

The People of the State of Michigan enact:

451.302 Protective committees, depositaries and solicitors; definitions.

Sec. 2. Definitions as used in this act are as follows:

- (a) The term “commission” means the public trust commission as hereinbefore created.
- (b) The term “person” or “persons” shall include natural persons, corporations, partnerships, associations, companies, and syndicates.
- (c) The term “security” or “securities” shall include bonds, notes, debentures, and any other instrument of like character used to evidence indebtedness.
- (d) The term “protective committee” shall include all persons who propose or purport to act, or who are now acting, for and in behalf of others and/or themselves with respect to a security and/or for the purpose of protecting and preserving the common interests of the holders or owners of the particular security.
- (e) The term “depository” shall include all persons who propose to act, or who are now acting, in connection with a protective committee for the purpose of accepting securities for deposit under and/or consents to a protective committee agreement.
- (f) The term “solicitor” shall include all persons who procure or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly the deposit of securities with a depository under a protective committee agreement or similar instrument and/or who procure or solicit directly or indirectly, or who are now procuring or soliciting directly or indirectly, the consent of holders or owners of securities to a protective committee agreement or similar instrument.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.302.

451.303 Protective committees, depositaries and solicitors; license applications, fees, hearing, bonds; inactive committee or depository; names, inspection.

Sec. 3. It shall be unlawful for any person to act as a member of a protective committee, as a depository or as a solicitor in this state for the purpose of procuring the modification and/or amendment and/or foreclosure of any instrument in writing securing any issue of bonds, notes, debentures and all other similar evidences of indebtedness without first procuring a license and continuing to be licensed therefor. Any person desiring a license either as a member of a protective committee, as a depository, or as a solicitor shall apply therefor to the commission upon application forms to be furnished by the commission. Such application shall, in the event that the applicant is a natural person, set forth the name, age, residence, business address, principal occupation and antecedent business experience of the applicant, the name of the security with respect to which the applicant desires to act, and such other facts as the commission shall require. In the event that the applicant is a non-natural person the application shall set forth such pertinent information as the commission may require including information and facts concerning the applicant's principal officers or members similar to those required of natural persons. The commission may require such further information as it shall deem

necessary to satisfy it of the integrity and the financial responsibility of the applicant. Every application shall be under oath. An annual license fee of 5 cents for each 1,000 dollars par value of outstanding bonds or notes shall be charged each protective committee and each depositary, and an annual license fee of 25 dollars shall be charged each solicitor, for each issue, and these respective license fees shall accompany the application: Provided, however, That the commission, in its discretion, may provide that such respective license fees need not accompany the application, but the payment thereof may be deferred to such time as the commission shall designate. In case the payment of such respective license fees is deferred as above provided, such fees shall be a lien on the securities deposited. If the commission should conclude that a license should not issue, the application may be denied: Provided, That no order of denial shall be entered until the applicant has been given a hearing on the reasons for such denial. Any duly licensed member of a protective committee may act as a solicitor without procuring a license as such.

The commission may in its discretion require a sufficient bond to be filed by each of the members of the bondholder's committee. Such bonds shall be subject to the approval of the commission.

In case any protective committee or depositary which is in existence at the time this act shall take effect, shall fail to function, the commission, in its discretion, may grant to the protective committee or depositary whose application covering the same issue of securities has been granted under the provisions of this act, power to function as and in lieu of such inactive protective committee or depositary or the commission may designate a person or persons to act as a protective committee and/or the commission may designate a person or persons to act as a depositary under the provisions of this act, and/or the commission may designate a person or persons to act as conservator of the deposit agreement of the inactive protective committee and/or the deposited securities pledged or remaining or deposited under the emergency clause of this act. In all cases of inactive or delinquent protective committees or inactive or delinquent depositaries the commission shall have power to summon and compel such committees and/or depositaries to appear at a hearing before said commission, by giving 3 days notice to such inactive or delinquent committee and/or depositary. At such hearing, the commission shall take proofs and hear evidence as to the delinquency and/or inactivity complained of. In the event the commission shall decide that it is necessary for the safeguarding of the interests of the holders or owners of the particular security under control of delinquent and inactive committee and/or depositary it shall enter such order in the premises in accordance with its findings, and shall have power to compel the inactive or delinquent committee and/or depositary to surrender, deliver and yield up forthwith to the commission, or to any depositary nominated by said commission, all securities of every kind theretofore deposited with said inactive or delinquent committee or depositary whose license was revoked by this commission and make such other order and/or orders in the matter, as may be necessary or advisable in the judgment of the commission to safeguard and protect the interest of said security holders, and preserve any liens, attaching to such securities. The names and addresses of bondholders filed with the commission shall be open to the mortgagor, or successor to title of record upon proper application to the commission, but shall not be made public or subject to inspection by anyone not connected with the commission, except by order of the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—Am. 1933, Act 205, Imd. Eff. June 28, 1933;—Am. 1935, Act 218, Imd. Eff. June 8, 1935;—CL 1948, 451.303.

451.304 Protective committees, depositaries and solicitors; licenses, non-resident applicants, filing; service of process.

Sec. 4. Every applicant for a license who is a non-resident of this state shall file with the application an irrevocable consent that suits and actions arising out of or founded upon any activity of such applicant in this state as a member of a protective committee, as depositary, or as solicitor, as the case may be, may be commenced against the applicant in the proper court of any county in the state in which the plaintiff may reside, or if the plaintiff is a non-resident, in Ingham county, by the service of any process authorized by the laws of this state on the chairman of the commission; said consent stipulating and agreeing that such service of any process on such chairman shall be taken and held in all courts to be as valid and binding as if due service had been made on the applicant personally. All process which shall be served upon said chairman in reliance upon the consent of an applicant shall be served in duplicate, 1 of which shall be retained in the office of the commission and the other forwarded by the commission forthwith by registered mail to the address of the person against whom said process is directed.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.304.

451.305 Protective committees, depositaries and solicitors; licenses, suspension or revocation.

Sec. 5. The commission shall have the power to suspend or revoke licenses once issued for any practices on the part of the person licensed partaking of, or actually resulting in, fraud, deception or imposition upon the holders or owners of securities whether or not such holders or owners have deposited their securities and/or consented to a protective committee agreement, and also for activity in violation of the commission's orders or rulings or the provisions of this act, or in case of members of protective committees for failure to act expeditiously in the matter with respect to which they organized: Provided, That no order of suspension or revocation of license shall be entered until the person licensed has been given a hearing on the reasons for such suspension or revocation. Upon notice of revocation, it shall be the duty of the person licensed to return the license to the commission for cancellation.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.305.

451.306 Protective committees; statement, contents; application to solicit security holders.

Sec. 6. Before any protective committee now in existence or hereafter formed, shall employ solicitors, or itself solicit, the deposit of securities with a depository under a protective agreement and/or the consent of holders or owners of securities to a protective agreement, it shall file with the commission a statement under oath containing the following information:

- (a) The amount of the particular security originally issued;
- (b) The amount of the particular security outstanding at the date of the execution of the statement;
- (c) The names and addresses of all persons known to or believed by the protective committee to be the holder or owner of the particular security and the amount of the particular security which such persons severally hold or own;
- (d) A copy of the agreement or indenture, if any, under which the security was issued;
- (e) The purpose and reasons for the organization and formation of the protective committee;
- (f) A copy of the depository or protective agreement which the protective committee proposes to employ, and in the case of existing protective committees, a copy of the depository or protective agreement which the committee is now employing, in the procurement of the deposit of securities and/or the consent to a protective committee agreement of the holders or owners of securities;
- (g) A complete list of the names and addresses of the members of the protective committee and an identification of its chairman and its secretary;
- (h) The name and address of the person or persons who executed the security.

The foregoing statement shall, in the case of protective committees organized after the date this act goes into effect, be accompanied by an application for permission to solicit the holders or owners to make deposit of the particular security under, and/or to procure the consent of holders or owners to the proposed protective committee agreement, and no such solicitation shall be made unless and until the application is granted by the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.306.

451.307 Protective committees; solicitation of security holders; fraud, conditions, limitation of charges.

Sec. 7. The right to solicit the deposit of securities by, and/or the consent to a protective committee agreement of, the holders or owners of securities in this state by protective committees organized after this act goes into effect shall not be granted by the commission in any case where it appears to the commission that such solicitation of deposit and/or consent would work a fraud, deception, or damage on the holders or owners of said securities. The commission may impose such conditions as it may determine to be necessary to safeguard the holders or owners of the particular security and said commission may also supervise the terms and provisions of the depository or protective committee agreement and may limit the compensation of, and the charges to be made against a depositing and/or consenting holder or owner, by the protective committee, which compensation shall include all expenses of said protective committee, its agents, and attorneys.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.307.

451.308 Protective committees; notice to issuer of security, objections, hearing.

Sec. 8. Before said commission shall authorize a protective committee which is organized after this act goes into effect to solicit, either through its members or its employees, the deposit of securities and/or the consent of holders or owners of securities, it shall cause notice to be served by registered mail upon the person or persons who executed said security, advising said person or persons that an application for permission to solicit the deposit of the particular security and/or the consent of the holders or owners to a protective committee agreement has been filed with said commission and that if there are any objections to the granting of such application written objections thereto shall be filed with the commission within 15 days

from the date of the receipt of said notice. The commission is hereby authorized and empowered for good cause shown to extend the time within which such written objections may be filed.

In the event that no written objections are filed with said commission by the person or persons who executed said security within 15 days from the date of the receipt of the aforesaid notice or within such further time as the commission may allow, said commission shall proceed promptly to dispose of said application.

In the event, however, that written objections are filed within proper time as aforesaid, the commission shall promptly serve notice upon the chairman and secretary of the protective committee and upon the person or persons who filed the written objections that a hearing of the matter will be had before the commission at a time and place designated by the commission. At such hearing there may be presented to the commission such testimony and evidence as bears upon the question whether the solicitation of the deposit of securities and/or the consent of holders or owners to the protective committee agreement would work a fraud, deception, or damage on the holders or owners of said security. After said hearing, the commission shall proceed promptly to dispose of said application.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.308.

451.309 Protective committees; records and reports.

Sec. 9. Every protective committee now in existence or hereafter to be formed shall keep a written record of its meetings, doings and activities and it shall file with the commission at least as often as once each month a written report under oath of its meetings, doings and activities for the period preceding the date of the report. The report shall set forth the minutes of its meetings, all data as to negotiations with or in behalf of the holders or owners of the security with respect to which the protective committee was organized; the names and addresses of persons who have deposited their security and/or consented to the protective committee agreement, the total amount of the security which has been deposited and/or with respect to which consent to the protective agreement has been obtained, and such other or further facts pertinent to its activity. Said commission may request any protective committee to supplement its reports from time to time with such information as the said commission may deem necessary or expedient.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.309.

451.310 Protective committees; authority to take action.

Sec. 10. No protective committee, either now in existence or hereafter to be organized, shall take or authorize the taking of any action by suit or otherwise, against the property and/or business with respect to which a security was issued and/or against any person or persons liable or obligated in connection with said property or security, or consent to or approve of any plan, agreement, sale or exchange with respect to such security and/or property, unless the authority so to do has been conferred upon the protective committee by the commission.

Any committee desiring to obtain such authority shall file with the commission an application therefor; which application shall set forth the proposed action, plan, agreement, sale or exchange. Thereupon the commission shall enter an order appointing a time and place for a hearing before the commission upon said application and upon the fairness of the terms and conditions of the proposed action, plan, agreement, sale or exchange, and providing for the giving of notice of said hearing, either by mail or by publication, or both, as the commission shall determine, to all holders or owners of said securities, and to all persons to whom it is proposed to issue securities in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash. Any interested party, including all persons to whom it is proposed to issue securities in such exchange, shall have the right to appear at said hearing and to be heard.

The commission shall have the authority to approve said application, if satisfied that said action, plan, agreement, sale or exchange will not work a fraud, deception or damage upon the holders or owners of the securities affected thereby. If it is proposed to issue any security in exchange for 1 or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, authority to make, consent to or approve of such exchange shall not be granted unless, after such hearing, the fairness of the terms and conditions of such exchange are approved by the commission.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—Am. 1935, Act 218, Imd. Eff. June 8, 1935;—Am. 1943, Act 149, Imd. Eff. Apr. 14, 1943;—CL 1948, 451.310.

451.311 Public trust commission; investigations, audits and appraisals.

Sec. 11. The said commission is authorized and empowered to make investigations, audits, or appraisals relative to or in connection with the property and/or business located in this state with respect to which the security for the protection of which a protective committee has been organized. The said commission is authorized to act for and in behalf of the holders or owners of defaulted mortgage securities by acting as

custodian, and is hereby authorized to appoint custodians of defaulted mortgage property and to have supervision of defaulted bonds, notes, debentures, and any other instruments of like character used to evidence indebtedness secured by mortgage. All books, records and documents of the commission whether filed with it or prepared by it shall be open to the public.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—Am. 1935, Act 218, Imd. Eff. June 8, 1935;—CL 1948, 451.311.

451.312 Public trust commission; subpoenas, oaths, records.

Sec. 12. The said commission is authorized and empowered to issue subpoenas to compel the attendance of witnesses and to compel the production of books, records and documents in connection with any investigation, hearing, or other matter pending before the board, to issue process to compel such attendance and production. Each member shall be authorized to swear witnesses and administer oaths in any matter coming before him or the commission. The commission shall keep records of its hearings, meetings and other activities. Any witness who refuses to obey a subpoena or who refuses to be sworn or testify, or who fails to produce any papers, books or documents touching any matter under investigation, or any witness, party or attorney who is guilty of any contempt while in attendance at any hearing held under this act may be punished as for contempt of court; and for this purpose an application may be made to any circuit court within whose territorial jurisdiction the offense is committed, and for which purpose the court is hereby given jurisdiction.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.312.

451.313 Public trust commission; investigations; costs; audits and appraisals.

Sec. 13. Any person interested in any security in connection with which a protective committee is organized may request the commission to make an investigation, audit, or appraisal and report with respect to the property or business to which the security pertains. However, before any investigation, audit, or appraisal and report is made by the commission upon such a request, the person so requesting shall, if required by the commission, deposit with the commission the sum of money that the commission considers necessary to meet the cost of the investigation, audit, or appraisal and report. If the deposit is insufficient to defray the cost of the investigation, audit, or appraisal and report, the commission may request further deposits as a condition of the continuance by it of its investigation, audit, or appraisal and report. All money so deposited shall be deposited by the commission in the state treasury in a special fund and disbursements from that fund shall be upon the warrant drawn on the state treasurer, and any disbursements shall be for the purposes for which the money is paid. Any excess over and above the cost of the requested investigation, audit, or appraisal and report shall be returned to the person who made the deposit.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.313;—Am. 2002, Act 104, Imd. Eff. Mar. 27, 2002.

451.315 Public trust commission; suspension of orders, grounds, procedure.

Sec. 15. The commission may temporarily suspend any of its orders when it appears to such commission that the terms of an order have been or are about to be violated but no such suspension order shall be effective for longer than 10 days unless the commission shall within such time serve notice upon the persons affected of the reason therefor, and shall grant a hearing thereon at a date not more than 15 days from the date of the suspension order. After such hearing the commission may either withdraw its suspension order or make the order of suspension a permanent order of revocation in accordance with the evidence.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.315.

451.316 Aggrieved parties; action in circuit court.

Sec. 16. Any person aggrieved by any order or action of the commission may apply to the circuit court of which such person is a resident or to the circuit court for Ingham county for any relief to which said person shall deem himself entitled, and in said suit the members of said commission shall be named as defendant and process may be served on the commission by serving any member thereof: Provided, That no injunction or other order shall issue suspending or staying any order or decree of said commission except after due notice to the commission and a reasonable opportunity for hearing thereon.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.316.

451.317 Fiduciary's relation to security holders; reports of purchases.

Sec. 17. All mortgagors and all persons who are depositaries, solicitors, and members of protective committees shall be deemed to be in a fiduciary relationship to the holders or owners of the securities with respect to which they are mortgagors, depositaries, solicitors, and members of protective committees, respectively, whether or not such holders or owners have deposited their securities and/or consented to the protective committee agreement; and every purchase by a mortgagor, depositary, solicitor or member of a

protective committee of securities with respect to which such purchaser is the mortgagor, depository, solicitor or member of a protective committee, respectively, shall be forthwith disclosed in writing to the commission by such purchaser.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—Am. 1937, Act 212, Imd. Eff. July 21, 1937;—CL 1948, 451.317.

451.318 Construction of act; severing clause.

Sec. 18. The provisions of this act shall be liberally construed to the end that the purposes thereof may be accomplished by preventing fraud, deception and damage on holders or owners of securities. Should any section or clause of this act be declared invalid by any court of last resort having jurisdiction in the premises, then such decision shall affect only the section or clause so declared to be invalid and shall not affect any other section or clause of this act.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.318.

451.318a Bonds; exception from act; securities exempt from blue sky law and mortgage tax act.

Sec. 18a. The provisions of this act shall not be construed to apply to the bonds and other obligations issued by the United States government, by any state of the United States, or by any political subdivision thereof, or by any assessment district.

The exchange of securities for other securities, when such exchange has been approved by the commission, shall be exempt from the provisions of Act No. 220 of the Public Acts of 1923, as amended, and Act No. 91 of the Public Acts of 1911.

History: Add. 1933, Act 205, Imd. Eff. June 28, 1933;—CL 1948, 451.318a.

Compiler's note: Act 91 of 1911, referred to in this section, was repealed by Act 301 of 1939. Act 220 of 1923, also referred to in this section, was repealed by Act 265 of 1964.

451.319 Violation of act; penalty.

Sec. 19. Any person violating any of the provisions of sections 3, 5, 6, 9, 10 and 17 shall be punished by a fine of not less than 500 dollars nor more than 5,000 dollars, together with costs of prosecution, or by imprisonment in the Michigan reformatory at Ionia, state prison or other penal institutions for not less than 6 months nor more than 2 years, or both such fine and imprisonment in the discretion of the court. The term "person" as is used in this section shall include an officer or employe of a corporation or a member or employe of a partnership who as such officer, employe or member is under duty to perform the act in respect to which the violation occurred.

History: 1933, Act 89, Imd. Eff. May 25, 1933;—CL 1948, 451.319.

TRUST MORTGAGES AND BONDS Act 208 of 1933

451.351-451.365 Repealed. 1964, Act 256, Eff. Aug. 28, 1964.

TRUST MORTGAGE FORECLOSURE Act 210 of 1933

AN ACT to provide for the acquisition, management and disposition, by the trustee or trustees as a trust under the jurisdiction of equity, of property mortgaged to such trustee or trustees to secure bonds or other obligations, where such acquisition is requested or assented to by the holders of a majority in amount of such bonds or obligations and no bid for the mortgaged property at public sale under decree of foreclosure was or is made or appears to be obtainable for a sum representing the fair and reasonable value of the interest in said property of all holders of such bonds or obligations; to provide for the concurrence or non-concurrence of such holders in said request and for the method, time and manner of payment to non-concurring holders of their pro rata share of the amount so bid by said trustee or trustees.

History: 1933, Act 210, Imd. Eff. July 3, 1933.

The People of the State of Michigan enact:

451.401 Trust mortgage foreclosure; definitions.

Sec. 1. As used in this act:

The term “trust mortgage” means any trust mortgage, trust indenture or deed of trust given to secure bonds or other obligations issued and authenticated as therein set forth.

The term “trustee” means the trustee or trustees of any such “trust mortgage.”

The term “bonds” means bonds or other obligations outstanding and secured by any such “trust mortgage.”

The term “request” as used in sections 2 and 3 of this act means the written request filed by the trustee or holders of bonds for authorization of the trustee to bid for and acquire the mortgaged property as provided in section 2 of this act.

The term “non-concurring holder or holders” means such holder or holders as shall have filed written refusal to concur in said “request.”

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.401.

451.402 Trust mortgage foreclosure; insufficient bid; request for trustee to bid, procedure.

Sec. 2. Upon filing in any circuit court in chancery a report of the proceedings had in relation to the sale under a decree of said court for the foreclosure of any trust mortgage given to a trustee to secure bonds issued and authenticated as therein set forth, if it shall appear from said report that no bid was made for the mortgaged property or if a bid therefor was made and it shall, in the manner hereinafter set forth, be made to appear to the court that the sum so bid does not represent the then fair and reasonable value of the interest of the holders of such bonds secured thereby, and, in either event, that no bid for a sum representing such fair and reasonable value of said interest appears to be obtainable, the court may authorize the trustee to bid for and acquire said mortgaged property as hereinafter set forth. Such authorization to bid for and acquire such property shall be made only upon written request therefor to said court by said trustee, or the holders of not less than a majority of the amount of such bonds then secured by said trust mortgage. The request by such holders may be executed by said holders in person, or by agent or attorney. Upon the filing of such request the court shall make an order requiring all interested persons to appear at a time to be designated in said order and show cause, if any, why the court should not authorize the trustee to bid for and acquire the mortgaged property as above provided. The trustee shall cause said order to be published in some newspaper designated by the court and printed in the county where such foreclosure proceedings are pending, and/or in such other newspaper as the court may direct, once in each week for 15 successive weeks prior to the return day of said order to show cause and shall mail or cause to be mailed a copy thereof to the mortgagor, to all other parties in said foreclosure proceedings and to each holder of said bonds secured by said mortgage insofar as the names of such holders are known to the trustee, at least 12 weeks prior to the date specified in said order, such notice to be mailed in each instance to the last known postoffice address. Proof of such publication and of such mailing shall be filed in said proceedings on or before the return day of said order, and proof of mailing shall be sufficient if made by affidavit of the trustee, or by an agent, employee or representative of the trustee having knowledge of the facts, merely averring [averring] that a copy of said order was so mailed. Neither the validity nor the regularity of proceedings under this act shall be affected by the fact that any mortgagor, party, holder of said bonds or interested person may not have had actual notice of said order to show cause or by the fact that a copy of said order may not have been mailed to, or, for any other reason, may not have been received by such mortgagor, party, holder of said bonds or interested person. Any interested party shall have a right to be heard and may offer testimony upon the hearing on said order to show cause. On or before the return day of said order to show cause any holder of bonds secured by said trust mortgage may file in writing

a refusal to concur in such request. An order authorizing but not requiring the trustee to bid for and acquire the mortgaged property for such sum as shall, in the judgment of the court, represent the fair and reasonable value of the interests therein of the holders of the bonds may be entered if, upon said hearing, the court shall find either that no bid was made for the property offered for sale under said decree or that the sums so bid therefor did not represent the fair and reasonable value of the interests of such holders in said property and that no bid for a sum representing such fair and reasonable value of such interest appears to be obtainable: Provided, however, That no such order shall be entered where the request has been made by the trustee unless the holders of not less than a majority of the amount of such bonds then outstanding shall, prior to the entry of said order, have joined in said request, by a writing filed in said proceedings executed by said holders in person or by agent or attorney. The trustee may make said bid in open court or may file said bid in writing in said proceedings within 30 days after the entry of said order. Such bid for and acquisition of said property by said trustee shall be for and on behalf of all holders of bonds secured by said trust mortgage who shall not, in the manner herein set forth, have filed in said proceedings their written refusal to concur in the request whereon said order to show cause was entered, according to respective pro rata interests, and every holder of said bonds shall be conclusively presumed to have assented to such acquisition of said property and to the use of such bonds of such holders therefor unless such holder shall have filed such refusal to concur. Any such acquisition by the trustee shall be subject to all rights of redemption of the mortgagor and other parties. The subsequent transfer of any bond in respect of which any request, assent or action under any provision of this act shall have been made, presumed or taken shall not affect such request, assent or action. To the extent of the net amount which would have been distributable on the bonds secured by said trust mortgage if such bid were fully paid in cash, the bid shall be satisfied by a pro rata credit deemed to have been made on each such bond. The court shall make provision in said order for payment to non-concurring holders of their pro rata share of the net amount to which each of said holders shall be entitled by reason of said bid and acquisition.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.402.

451.403 Trust mortgage foreclosure; payment to non-concurring holders.

Sec. 3. The court may in its discretion provide in said order that such payment to non-concurring holders may be made in installments, or otherwise deferred for a period of time if the amount so deferred shall not exceed 25 per cent of the net amount of the bid: Provided, however, That the full pro rata to be paid said non-concurring holders hereunder shall, in any event, be made within 18 months from the entry of said order. The sum so deferred shall bear interest at the rate borne by said bonds. No personal obligation for such deferred payment shall be imposed upon the trustee but such deferred payment shall be secured upon the right, title and interest acquired by the trustee as a result of such acquisition and shall be enforced as herein provided. If payment to said non-concurring holders shall not be made as provided in said order, the court may, upon application of any non-concurring holder to whom such payment shall not have been made, order the trustee to sell the property so purchased by the trustee, or such part thereof as may be necessary, either at public or private sale after notice thereof shall have been given to all interested parties in such manner as the court shall direct, and out of the proceeds of said sale pay the sums due said non-concurring holders, the balance, if any, to belong to the beneficiaries of the trust hereafter provided for and to be held and dealt with by the trustee as the court shall direct.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.403.

451.404 Trust mortgage foreclosure; trustee, maintenance and operation of property; sale, accounting.

Sec. 4. Any property acquired by the trustee as aforesaid shall be managed and administered by the trustee under and in accordance with the rules and principles of law and equity pertaining to express trusts generally subject to the jurisdiction of said court to be exercised in said cause by proceedings subsequent to the decree therein. The trustee shall be allowed all proper expenses and disbursements and reasonable compensation to be approved by the court. The trustee shall have power and authority to repair, maintain, protect, preserve and operate or lease the property until such time as a sale or other disposal thereof shall be approved or directed. The trustee may borrow money for any of said purposes, to discharge prior liens, taxes, assessments or other incumbrances against said property or for any other purpose of the trust and may secure such money so borrowed by mortgage of said property or by pledge of the income thereof. Any such mortgage or pledge shall be superior to and binding on the interests of the beneficiaries of said trust. It shall be the duty of the trustee to negotiate and effect a sale or other disposal of the property and make distribution of the proceeds of such sale or disposal to the beneficiaries of the trust at the earliest time at which the same can be done without sacrifice of the fair and reasonable value of such property. Any sale, unless for cash, shall be upon such terms as the court may approve after notice shall have been given to all beneficiaries of the trust in such manner as

the court shall direct. No operating contract which is for more than 2 years or borrowing of money, mortgage, sale or other disposal shall be made except by and with the approval and authorization of the court upon notice in such manner as the court shall direct to the beneficiaries of said trust. The court may provide such other terms and conditions of the trust and powers, duties and authority of the trustee, not inconsistent with the foregoing, as to the court shall be deemed to be to the interests of the beneficiaries of the trust as a whole. Upon the complete consummation of a sale or other disposition of all of the trust property the trustee shall render in writing a full and complete report and account of the administration of said trust and of the distribution of the assets, income and proceeds thereof upon which a hearing shall be had after such notice to the beneficiaries of the trust as the court shall direct. If any such trust shall continue for more than 1 year an account and report of the administration of such trust shall be rendered at such times as may be required by the court but at least annually and when any such report shall have been made the final account and report aforesaid shall be required to cover only from the date of the then last account and report.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.404.

451.405 Construction and application of act; severing clause.

Sec. 5. This act is intended to be remedial and to be liberally construed and to be supplemented by rule of court if necessary or expedient to the accomplishment or furtherance of the intents and purposes thereof. This act shall be applicable to and in all foreclosure proceedings of the nature aforesaid pending at the time of the coming into effect hereof in which the sale shall not then have been confirmed as well as to and in all such proceedings begun after the coming into effect hereof. If any provision hereof shall be found invalid or unenforceable the remaining provisions hereof shall not be affected thereby.

History: 1933, Act 210, Imd. Eff. July 3, 1933;—CL 1948, 451.405.

DEBT MANAGEMENT ACT

Act 148 of 1975

AN ACT to regulate the business of debt management; to require licenses and to fix fees therefor; to prescribe the powers and duties of the department of commerce and its director; to prescribe conditions for debt management contracts; to provide for the disposition of revenues; to provide penalties; and to repeal certain acts and parts of acts.

History: 1975, Act 148, Eff. Mar. 31, 1976.

The People of the State of Michigan enact:

451.411 Short title.

Sec. 1. This act shall be known as the “debt management act,” and shall be broadly construed to effectuate its purpose of providing protection to the public.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of powers and duties of the corporation and securities bureau from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.412 Definitions.

Sec. 2. As used in this act:

(a) “Business of debt management” means providing or offering to provide debt management to 1 or more residents of this state.

(b) “Counselor” means an employee or agent of a licensee who engages in counseling and budget analysis functions and scheduling of debtor's funds.

(c) “Creditor” means a person for whose benefit money is being collected and disbursed by a licensee. A licensee is not a creditor for purposes of this act.

(d) “Debt management” means the planning and management of the financial affairs of a debtor and the receipt of money from the debtor for distribution to a creditor in payment or partial payment of the debtor's obligations.

(e) “Debtor” means a person from whom money is being collected for the benefit of a creditor of the debtor.

(f) “Department” means the office of financial and insurance services.

(g) “Director” means the commissioner of the department or his or her authorized representative.

(h) “Fees and charges of the licensee” means the total amount of money to be charged a debtor by the licensee, including the \$25.00 initial payment and any charges for advice, materials, or referrals.

(i) “License” means a written certificate or exemption order issued by the director.

(j) “Licensee” means a person licensed under this act to perform debt management services and located inside or outside the boundaries of this state.

(k) “Office” means each location by street name, building number, city, and state where a person engages in the business of debt management.

(l) “Office manager” means an employee or owner charged with the supervision, oversight, or approval of the functions of budget analysis, counseling, or scheduling.

(m) “Person” means an individual, corporation, partnership, association, joint stock company, trust where the interests of the beneficiaries are evidenced by a security, limited liability company, or other legal entity.

(n) “Sweep arrangement” means an arrangement that provides for a temporary or permanent transfer of funds from 1 trust account to another trust account when a predetermined time, account balance, or other condition occurs or is fulfilled.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.413 Business of debt management as financial planning service requiring license; exception.

Sec. 3. (1) Except as provided in subsection (2), a person engaged in the business of debt management is rendering a financial planning service and must obtain a license under this act.

(2) Subsection (1) does not apply to the following when engaged in the regular course of their respective businesses and professions:

(a) An attorney at law, if providing debt management advice incidental to his or her law practice.

(b) A certified public accountant, if providing debt management advice incidental to his or her accounting practice.

(c) A bank, fiduciary, savings and loan institution, or credit union duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of its principal business.

(d) A title insurer or abstract company, while doing an escrow business.

(e) An employee or agent of a licensee, acting solely in the capacity of agent for the licensee.

(f) A judicial officer or person acting under court order.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.414 License required; contract made by unlicensed person void; persons eligible for exemption.

Sec. 4. (1) After January 1, 1976, a person located within or outside of the boundaries of this state shall not engage in the business of debt management without first obtaining a license as required in this act. A contract of debt management as defined by this act made by a person without a license is null and void.

(2) A person who is performing a debt management service and receiving compensation primarily from governmental organizations, governmentally sponsored organizations, charitable trusts, or foundations tax exempt pursuant to section 501(c) of the internal revenue code of 1986, upon a showing of safeguards in the handling of debtor funds, may be granted an exemption from any provision of this act if the exemption is found to be in the public interest.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.415 License; application; filing requirements; expiration and renewal of license; books and records; financial statements; licensee with board of directors or equivalent.

Sec. 5. (1) An applicant for a license to engage in the business of debt management shall file an application with the director in writing and under oath that includes all of the following:

(a) The name and exact address of the applicant and the name and address of each of the following, as applicable:

(i) If the applicant is a corporation, its officers and directors.

(ii) If the applicant is an association, its officers and directors.

(iii) If the applicant is a partnership, its partners.

(iv) If the applicant is a limited liability company, its manager or managers.

(v) If the applicant is any other legal entity, its manager or other person designated to control the operation of that legal entity.

(b) A copy of a certificate of an assumed name, if applicable.

(c) One or more of the following, as applicable:

(i) If the applicant is a corporation, a copy of the articles of incorporation.

(ii) If the applicant is an association, a copy of the organizational documents of the association.

(iii) If the applicant is a partnership, a copy of the partnership agreement.

(iv) If the applicant is a limited liability company, a copy of the articles of organization.

(2) Upon filing the application, the applicant shall do all of the following:

(a) Pay to the department a license fee of \$50.00 for each office.

(b) Pay to the department an investigation fee of \$50.00.

(c) Furnish a surety bond to the people of the state of Michigan. The amount of the surety bond must equal or exceed the total amount of Michigan clients' funds in the applicant's or licensee's trust account at the time of application for license or renewal, as determined by the department, but in no event shall a surety bond be less than \$25,000.00 or be greater than \$100,000.00. The surety bond shall be conditioned upon the faithful

accounting of all money collected upon accounts entrusted to a licensee engaged in the business of debt management or the licensee's employees and agents. The surety bond shall be approved by the department. In lieu of a surety bond, the department may by rule provide for an appropriate deposit of cash or securities, a letter of credit, or the assignment of coverage of other bonds if the department is satisfied that comparable or more extensive coverage results.

(d) File an appointment of the director as the agent of the applicant for service of process in this state.

(3) Service of process upon the director shall be considered service upon an applicant or licensee, including an applicant who complies with or fails to comply with subsection (2)(d).

(4) Unless surrendered, revoked, or suspended, a license issued under this act expires on December 31 of the year for which it is issued. A licensee may renew a license before the expiration date as provided under this act.

(5) A licensee shall create, maintain, and preserve accurate and complete books and records relating to the licensee's business. The books and records shall be maintained according to generally accepted accounting principles. A licensee or an applicant shall notify the department in writing of the address where the books and records are kept. If a licensee changes the location of the books and records, the licensee shall notify the department in writing within 10 business days after the change. The director may prescribe by rule or order the form and contents of books and records relating to a licensee's business.

(6) An applicant shall file a financial statement with an application for a debt management license. The director may require that the financial statement be audited or reviewed by an independent certified public accountant.

(7) If a licensee has a board of directors or the equivalent, the director shall not require that the licensee provide information concerning a member of the board of directors or equivalent, nor require that the member satisfy the examination provisions of this act, if that member does not receive a salary, stock dividend, or other financial benefit from that corporation other than reimbursement of the actual expenses incurred in carrying out the duties of a director of that corporation.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.416 License; investigation; grounds for issuance or nonissuance; examination; fee.

Sec. 6. (1) Upon receiving the application and approving the fees and surety bond, the department shall investigate the applicant's responsibility, experience, character, and general fitness. If the result of the investigation warrants a belief that the business will be operated fairly and honestly within the provisions of this act, the department shall issue a license. The investigation of the applicant shall at least include investigation of the following as applicable:

(a) If the applicant is a corporation, its officers and directors.

(b) If the applicant is a partnership, its partners.

(c) If the applicant is an association, its officers.

(d) If the applicant is a limited liability company, its manager or managers.

(e) If the applicant is any other legal entity, its manager or other person designated to control the operation of that legal entity.

(2) A license shall not be issued if the investigation reveals 1 or more of the following:

(a) That an individual investigated under subsection (1) meets any of the following:

(i) Was ever convicted of a crime involving moral turpitude including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense.

(ii) Violated or failed to comply with this act or a rule promulgated under this act.

(iii) Had a license to engage in the business of debt management revoked or suspended for any reason other than failure to pay licensing fees in this state or another state.

(iv) Defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings. The director may, at his or her discretion, waive this restriction if provided with evidence of justifiable cause for the bankruptcy, plus convincing evidence of the fitness of the bankrupt party to carry out his or her functions under this act.

(b) An individual applicant is not at least 18 years of age and a citizen of the United States.

(c) An applicant that is a partnership, corporation, limited liability company, association, or other legal entity required by statute to obtain authority to do business in this state has not been granted authority to do business in this state.

(d) The applicant is an employee or owner of a collection agency as defined in section 901 of the occupational code, 1980 PA 299, MCL 339.901, or process serving business or in any manner is affiliated with a collection agency or process serving business. The director may, in his or her discretion, waive this restriction on a showing of sufficient safeguards in the operation of the collection agency.

(3) An applicant shall pass an examination administered by the director or his or her designee before the director grants a license to the applicant under this act. A counselor shall pass an examination within the first 180 days of employment administered by the director or his or her designee. The examination may be oral or written, or partly oral and partly written, and shall be practical in nature and sufficiently thorough to ascertain the applicant's fitness. Questions on bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, trust funds, and the provisions of this act and rules promulgated under this act may be included in the examination. The director may charge an examination fee of \$25.00 for administering this examination.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.417 Applicability of examination provisions.

Sec. 7. Except as provided in this act, the examination provisions of this act shall not apply to the existing officers, directors, partners, or individual owners of currently licensed debt management businesses unless any of those persons cease to be engaged in the debt management business with their currently licensed firm. To reenter the business at a subsequent time, a person shall satisfy the examination provisions of this act.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.418 License renewal; application; fee; financial statements.

Sec. 8. Before December 1 of each year, a licensee shall file an application with the department for renewal of its license. The application shall be on the form prescribed by the department and shall be accompanied by a fee of \$50.00 for each office together with a surety bond in the same manner as an original application. The application shall cover each branch office that is under the ownership and control of the applying entity. Financial statements shall be filed with the application for renewal of a license. The director may require that the financial statements be audited or reviewed by an independent certified public accountant.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.419 License; grounds for denial, revocation, suspension, or postponement; notice; proceedings.

Sec. 9. (1) The director may deny, revoke, suspend, or postpone a license issued or applied for under this act for any of the following:

- (a) Conviction of a felony or of a misdemeanor involving moral turpitude.
- (b) Violating any of the provisions of this act or rules promulgated under this act, or any order or condition of license.
- (c) Fraud or deceit in procuring the issuance of a license under this act.
- (d) Indulging in dishonest or unethical conduct.
- (e) Insolvency, either in the sense that liabilities of the licensee exceed its assets or if the licensee is unable to pay its debts as they mature, or filing in bankruptcy, receivership, or assignment for the benefit of creditors by a licensee or applicant for a license under this act.
- (f) Failure to reasonably supervise agents or employees.

(2) Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, the department shall give notice, personally or by certified mail, to the licensee of facts or conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with the requirements of this act for retention of the license. If the department finds that the public health, safety, or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a

certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.420 Rules; rights, remedies, and procedures.

Sec. 10. Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, shall wherever applicable herein, govern the rules promulgated and rights, remedies, and procedures respecting the administration of this act.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.421 License; applicable provisions.

Sec. 11. All of the following apply to a license:

- (a) The director shall prescribe the form and size of a license.
- (b) A license shall show the name of the licensee and the address at which the business of debt management is to be conducted.
- (c) A license shall show the date of expiration of the license as December 31, and show other information prescribed by the director.
- (d) While in force, the license shall at all times be conspicuously displayed in the outer office of the licensee or branch office of the licensee.
- (e) A license is not transferable or assignable.
- (f) A license shall be surrendered to the department within 5 days after the date that the licensee either ceases to engage in the business of debt management or has its license revoked.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.422 Budget analysis.

Sec. 12. Before a contract is formed between a licensee and a debtor, a thorough and written budget analysis shall be compiled and a copy delivered to the debtor. A licensee shall not accept an account unless a written and thorough budget analysis indicates that the debtor can reasonably meet the requirements required by the budget analysis. The budget analysis shall contain all of the following information about the debtor:

- (a) Name and address.
- (b) Marital status and number of dependents.
- (c) Amount and source of all employment compensation, payments from government programs, child support and alimony payments, and other income.
- (d) Number of exemptions claimed on the debtor's most recent federal income tax return.
- (e) Gross income per pay period, type and amount of all payroll deductions, and net income per pay period.
- (f) Monthly home mortgage or rental payment. If the home mortgage payment does not include an escrow for real estate taxes, the budget analysis shall contain the amount and due dates of the real estate taxes on the property.
- (g) Type and amount of all other fixed periodic payments.
- (h) Type and amount of food, clothing, utility, vehicle, insurance, and all other living expenses.
- (i) List of creditors included in the plan.
- (j) A description of and amount owed for any outstanding garnishments and judgments.
- (k) Periodic amount available for payment toward a debt management plan.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.423 Consent of creditors as condition to charging or receiving fee.

Sec. 13. (1) Upon establishing a debt management plan for a debtor, a licensee may charge and receive an initial fee of \$25.00. However, unless 51% or more in number and dollar amount of all the debtor's creditors consent to the debt management program within 45 days of establishing the debt management plan, the fee shall be returned to the debtor and the debtor's account closed.

(2) Consent from a creditor shall be recorded on a separate form. The form shall contain all of the following:

- (a) A list of all the creditors.
- (b) The manner in which consent was sought.
- (c) The date of each contact.
- (d) The name of the person contacted, if applicable.
- (e) The response obtained from the person contacted.
- (f) Any revised or special conditions or arrangements that condition the consent.
- (g) The date on which the required consent was secured.

(3) The consent of a creditor may be sought by sending a notice of a debt management plan to a creditor by an appropriate means including by telephone, facsimile, electronic mail, or first-class mail. If the creditor does not respond within 14 days after the sending of the notice, it may be presumed that the creditor has given consent.

(4) If a payment under the debt management plan is sent to a creditor, acceptance of the payment or plan may be presumed 7 days after sending the payment.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled MCL 445.2003 of the Michigan compiled laws.

451.424 Contract between licensee and debtor; requirements.

Sec. 14. (1) A contract between a licensee and debtor shall include all of the following:

- (a) Each creditor to whom payments will be made and the amount owed each creditor.
- (b) The total amount of the licensee's charges.
- (c) The beginning and ending dates of the contract.
- (d) The number of months and the total principal amount plus approximate interest charges required to liquidate in full the debts, except mortgage or land contract interest payments, described in the contract.
- (e) The name and address of the licensee and of the debtor.
- (f) Other provisions or disclosures that the director determines are necessary for the protection of the debtor and the proper conduct of business by a licensee.

(2) Unless otherwise approved by the department and except for an amount due for 1 or more monthly fees or a closeout fee, a licensee shall distribute to the creditors of the debtor, at least monthly, all money received from a debtor or on behalf of a debtor.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.425 Trust account.

Sec. 15. (1) Subject to subsection (5), payments received by a licensee from or on behalf of a debtor for the benefit of a creditor shall be held in trust in a separate account maintained for the benefit of the licensee's Michigan clients at a financial institution whose deposits are insured by an agency of the United States government. Disbursements whether to the debtor or to the creditors of the debtor shall be made from the trust account. A payment from a debtor or on behalf of a debtor shall be deposited in the account not later than 2 business days after receipt of the payment. A sweep arrangement may be utilized if the trust account is insured for 100% or more of the balance in the trust account.

(2) The trust account shall be reconciled not less than once a month. The reconciliation shall ascertain the actual cash balance in the account and compare it with the sum of the escrow balances in each debtor's account. The reconciliation may be done electronically or by any other appropriate method and shall be done not more than 45 business days after receipt of the bank statement. An electronic or other appropriate notation of the reconciliation shall be kept as a permanent record of the licensee and shall be considered as in compliance with this section. Each trust account shall be individually scheduled in a licensee's reconciliation records.

(3) The trust account shall at all times have an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account, and failure to maintain that amount is cause for a summary suspension of the license.

(4) If a trust account fails to contain sufficient funds to cover the debtor escrow balances, the licensee shall immediately upon discovery notify the director by telephone, facsimile, electronic mail, or other method approved by the department. The licensee shall also provide written notice including a description of the remedial action taken.

(5) If the trust account described in subsection (1) is maintained at a financial institution described in subsection (1) located outside of this state, the licensee shall furnish a surety bond or irrevocable letter of credit to the people of the state of Michigan in an amount equal to or exceeding 100% of the average amount of deposits held in the trust account from month to month and in a form approved by the department. This requirement is in addition to an applicant's obligation under section 5(2)(c).

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.426 Duties of licensee.

Sec. 16. A licensee shall do all of the following:

(a) Create and maintain records of the accounts, correspondence, memoranda, papers, books, and other records of the debt management business. If the licensee elects not to retain original records, the licensee may utilize electronic, photocopy, or computerized methods of record keeping. The licensee shall preserve the records created under this subdivision for at least 6 years after they are created.

(b) Make all the records created and maintained under subdivision (a) available for examination by examiners of the department.

(c) Upon contracting with a debtor, give a copy of the contract to the debtor.

(d) Deliver a receipt to a debtor upon receiving cash from a debtor or within 3 business days after receiving a noncash payment from a debtor, and at least monthly beginning with the first month after contracting with a debtor deliver a statement that includes the dates and amounts received and disbursed on behalf of the debtor.

(e) Within 5 business days after a request from a debtor, provide a written statement that includes all of the following:

(i) All transactions concerning the money received from or on behalf of the debtor.

(ii) The total amount paid to each creditor.

(iii) The total amount of charges deducted from the payments received.

(iv) The amount held in reserve.

(f) At least every 90 days after contracting with a debtor, provide a written statement to the debtor that includes all of the following:

(i) The total amount received from and on behalf of the debtor.

(ii) The total amount paid to each creditor.

(iii) The total amount deducted from the payments received.

(iv) The amount held in reserve.

(g) At least annually, verify or cause the verification of payments to selected creditor accounts and do or designate 1 or more persons to do all of the following:

(i) Review each debtor's account file.

(ii) Review checks paid by the licensee.

(iii) Review procedures used by the licensee for processing checks and handling cash.

(iv) Review the complaint file maintained by the licensee.

(v) Verify payments to selected creditor accounts.

(vi) Review selected counselor records and work papers.

(h) If a contract with a debtor is lawfully sold, transferred, or assigned to a licensee from another licensee, furnish to the debtor a written notice of the sale, transfer, or assignment. The notice shall contain the name and address of the licensee and the name of the counselor authorized by the licensee to manage the contract.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.427 Examination of licensee.

Sec. 17. The department may examine, without notice, the condition and affairs of a licensee. In connection with an examination, the department may examine on oath a licensee and any director, officer, employee, customer, creditor, manager, member, partner, or stockholder of the licensee concerning the affairs and business of the licensee. The department shall ascertain whether the licensee transacts its business in the manner prescribed by this act and the rules promulgated under this act. The licensee shall pay the actual cost of the examination as determined by the department, which fee shall be deposited in the state treasury to the credit of the department. Failure to pay the examination fee within 30 days after receipt of demand from the department shall automatically suspend the license of the licensee until the fee is paid.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.428 Fee under debt management services contract; charge for cancellation or default; when contract effective; letter of continuation; excessive charge.

Sec. 18. (1) A licensee may charge a reasonable fee under a debt management services contract. The fees and charges of the licensee shall not exceed 15% of the amount of the debt to be liquidated during the express term of the contract. The licensee may require the debtor to make an initial payment of not more than \$25.00, which is part of the fees and charges of the licensee. The initial payment may be deducted from the amount of a subsequent fee that is amortized, if any.

(2) Except for a cancellation described in subsection (3), for which a licensee may not collect the additional fee described in this subsection, in the event of cancellation or default on the performance of the contract by the debtor before its successful completion, the licensee may collect \$25.00 in addition to fees and charges of the licensee previously received. This \$25.00 fee is not subject to the 15% limitation on fees and charges of the licensee in subsection (1).

(3) A contract is in effect when it is signed by the licensee and the debtor and the debtor has made a payment to the licensee. The debtor has the right to cancel the contract until 12 midnight of the third business day after the first day the contract is in effect by delivering written notice of cancellation to the licensee.

(4) If a debtor fails to make a payment to a licensee within 60 days after the date a payment is due under a contract, the contract is considered canceled by the debtor. A debtor may file a letter of continuation of a contract even if the debtor did not make a payment within 60 days after a payment was due. All of the following apply to a letter of continuation of a contract:

(a) A debtor may file only 1 letter of continuation with a licensee for any contract.

(b) A letter of continuation must contain a detailed explanation of the reason or reasons for the missed payment or payments.

(c) A contract for which a letter of continuation that meets the requirements of this subsection is filed remains in effect and subject to cancellation for any future failure to make a payment or payments as described in this subsection.

(d) A contract between a licensee and a debtor shall clearly provide for 1 letter of continuation by a debtor.

(e) A debtor may not file a letter of continuation with a licensee at the beginning of a contract.

(5) A licensee shall not contract for, receive, or charge a debtor an amount greater than authorized by this act. A person who violates this subsection, except as the result of an inadvertent clerical or computer error, shall return to the debtor the amount of the payments received from or on behalf of the debtor and not distributed to creditors, and, as a penalty, an amount equal to the amount overcharged.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.429 Prohibited practices.

Sec. 19. A licensee shall not do any of the following:

(a) Purchase from a creditor any obligation of a debtor.

(b) Execute a contract or agreement to be signed by the debtor unless the contract or agreement is fully and completely filled in and finished.

(c) Lend money or credit except under a plan approved by the department.

(d) Take a confession of judgment or power of attorney to confess judgment against the debtor or appear as the debtor in a judicial proceeding.

(e) Receive or charge a fee in the form of a promissory note or other promise to pay, or receive or accept a mortgage or other security in real or personal property for a fee, or both.

(f) Take, concurrent with the signing of the contract or as a part of the contract or as part of the application for the contract, a release of an obligation to be performed on the part of the licensee.

(g) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to a person for referring a prospective customer to the licensee. A payment by the licensee for the lawful sale, transfer, or assignment of a contract to the licensee from another licensee is not subject to this subdivision.

(h) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from a person other than the debtor or a person in the debtor's behalf in connection with the licensee's business of debt management, except under a plan approved by order of the department.

(i) Disclose the debtors who have contracted with the licensee other than to the director or his or her authorized representative, or disclose the creditors of a debtor to anyone other than the debtor, or the director or his or her authorized representative, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of the creditor in a debt management plan.

(j) Use or permit the use of a false, misleading, or deceptive statement or representation with regard to the services or charges of the licensee in any advertisement, display, broadcast, or offer of the licensee's services.

(k) Use an advertisement that gives a telephone number or post office box without identifying the licensee and the licensee's office address.

(l) Use advertisements containing any of the following representations:

(i) That the licensee will provide funds to pay bills or prevent attachments.

(ii) That a certain payment schedule will handle a certain amount or range of indebtedness.

(iii) That garnishment, attachment, repossession, or loss of job will be prevented.

(m) Fail to provide to the debtor the full benefit of a compromise of a debt arranged by the licensee with a creditor.

(n) In connection with the making of a debt management contract or with operation of the debtor's account:

(i) Employ any device, scheme, or artifice to defraud.

(ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

(iii) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person.

(o) Conduct the business of debt management without a surety bond, or deposit or assignment satisfactory to the department in lieu of a surety bond, as described in section 5(2), in place.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.430 Advertising.

Sec. 20. (1) A person shall not publish or circulate a pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed to or intended for distribution to prospective debtors unless a true copy has been filed with the department at least 10 business days prior to the first publication, and the department has given its approval for use, or unless the advertisement or class of advertising has been exempted by rule of the department. The department may allow a shorter filing period.

(2) Nothing in this act shall impose any liability, civil or criminal, upon a person or publisher regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station, and acting solely in his official capacity, who publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of this act.

(3) A person shall not publish an advertisement concerning the offer of debt management services in this state after the department finds that the advertisement contains a statement that is false or misleading or omits to make any necessary statement in order to make the statements made, in light of the circumstances under which they were made, not misleading and so notifies the person in writing. The notification may be given summarily without notice of hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may request in writing that the order be rescinded. Upon the receipt of a written request, the matter will be set for a hearing to commence within 45 days unless the person making the request consents to a later date. After the hearing the department shall determine whether to affirm and continue or to rescind the order.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.431 Assignment of wages.

Sec. 21. This act shall not be construed as prohibiting the assignment of wages by a debtor to a licensee, if the assignment is otherwise in accordance with the law of this state.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.432 Rules; decisions, orders, and rulings; electronic filing.

Sec. 22. (1) The director may promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, make specific decisions, make orders and rulings that include demands and findings, and take other necessary action for the implementation and enforcement of this act.

(2) The director may in his or her discretion provide for electronic filing of any document filed with the director or department under this act.

History: 1975, Act 148, Eff. Mar. 31, 1976;—Am. 2000, Act 255, Imd. Eff. June 29, 2000.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Administrative rules: R 451.1221 et seq. of the Michigan Administrative Code.

451.433 Cease and desist order; statement; misdemeanor; powers of department; court order; self-incrimination; injunction or restraining order; criminal proceedings.

Sec. 23. (1) When it appears to the department, either upon complaint or otherwise, that this act, or a rule promulgated under this act, has or is about to be violated, it may, in its discretion, either issue a cease and desist order or require the person to file with it a statement in writing, under oath, or otherwise, as to all the facts and circumstances concerning the subject matter which it believes to be in the public interest to investigate and may investigate those facts, and where appropriate, with or without the request for information, issue a cease and desist order.

(2) A person who knowingly authorizes, directs, or aids in violation of a final cease and desist order, or who knowingly fails to comply with the terms of a final cease and desist order, is guilty of a misdemeanor, and may be fined not more than \$5,000.00, or imprisoned for not more than 6 months, or both. Each violation constitutes a separate offense.

(3) The department in its discretion may:

(a) Make public or private investigations within or without this state as it deems necessary to determine if a person has violated or is about to violate this act or any rule or order promulgated hereunder or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, and publish information concerning the violation of this act or any rule or order.

(b) Require or permit any person to file a statement under oath or otherwise subject to the penalties of perjury as the department requires in writing as to all the facts and circumstances concerning the matter to be investigated. Failure to file the statement with all required information within 15 days after receipt of a departmental letter requesting it shall be the basis for issuance of a cease and desist order.

(4) For the purpose of an investigation or proceeding under this act, the department or any officer designated by it may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.

(5) In case of contumacy by, or refusal to obey a subpoena issued to a person, the circuit court, upon application by the department, may issue to the person an order requiring him to appear before the department, or an officer designated by it, to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(6) A person is not excused from attending and testifying or from producing a document or record before the department, or in obedience to the subpoena of the department or an officer designated by it or in a proceeding instituted by the department on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to penalty or forfeiture. A person may

not be prosecuted or subjected to a penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the person testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(7) When it appears to the department that a person is engaged or about to engage in an act or practice which constitutes or will constitute a violation of this act, or a rule promulgated under this act, it may in its discretion, bring an action in the circuit court for Ingham county or another circuit court to enjoin the act or practice and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The department may transmit evidence as may be available concerning the act or practice to the attorney general or a local prosecutor who may, in his discretion, institute the necessary criminal proceedings.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.434 Violations; penalties; jurisdiction; remedies.

Sec. 24. (1) A licensee who violates a provision of this act is guilty of a felony and shall be fined not more than \$5,000.00, or imprisoned not more than 2 years, or both.

(2) A person who violates an injunction or a cease and desist order issued pursuant to this act shall be guilty of criminal contempt. For the purpose of this act the court issuing an injunction shall retain jurisdiction, and the cause shall be continued, and in those cases the attorney general acting in the name of the state may seek appropriate remedies.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.435 Statute of limitations.

Sec. 25. An action brought pursuant to this act shall be commenced within 6 years after the cause of action accrues, except that chapter 58 of Act No. 236 of the Public Acts of 1961, as amended, being sections 600.5801 to 600.5869 of the Michigan Compiled Laws, shall apply wherever possible.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.436 Disposition of fees.

Sec. 26. The fees collected under this act shall be paid promptly into the state treasury to the credit of the general fund.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

451.437 Repeal of §§ 451.451 to 451.468.

Sec. 27. Act No. 135 of the Public Acts of 1961, being sections 451.451 to 451.468 of the Compiled Laws of 1970, is repealed.

History: 1975, Act 148, Eff. Mar. 31, 1976.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the corporations, securities and land development bureau to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

DEBT MANAGEMENT BUSINESS

Act 135 of 1961

451.451-451.468 Repealed. 1975, Act 148, Eff. Mar. 31, 1976.

SECURITY REGISTERED IN BENEFICIARY FORM

Act 433 of 1996

451.471-451.481 Repealed. 1998, Act 386, Eff. Apr. 1, 2000.

UNIFORM SECURITIES ACT
Act 265 of 1964

AN ACT to enact the uniform securities act relating to the issuance, offer, sale, or purchase of securities; to prohibit fraudulent practices in relation to securities; to establish civil and criminal sanctions for violations of the act and civil sanctions for violation of the rules promulgated pursuant to the act; to require the registration of broker-dealers, agents, investment advisers, and securities; to make uniform the law with reference to securities; and to repeal acts and parts of acts.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—2000, Act 494, Imd. Eff. Jan. 11, 2001.

Compiler's note: For transfer of statutory authority, powers, duties, and functions of the securities administrator to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

The People of the State of Michigan enact:

PART I
FRAUDULENT AND OTHER PROHIBITED PRACTICES

451.501 Offer, sale, or purchase of security; unlawful practices.

Sec. 101. It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud.
- (2) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
- (3) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Compiler's note: For transfer of powers and duties of the corporation and securities bureau from the department of commerce to the director of the department of consumer and industry services, see E.R.O. No. 1996-2, compiled at MCL 445.2001 of the Michigan Compiled Laws.

For transfer of statutory authority, powers, duties, and functions of the securities administrator to the office of financial and insurance services by type III transfer, see E.R.O. No. 2000-2, compiled at MCL 445.2003 of the Michigan compiled laws.

Transfer of powers: See MCL 16.335.

451.502 Investment adviser; unlawful practices.

Sec. 102. (a) Except as otherwise provided in this subsection, an investment adviser, a federally covered adviser, or a person who represents an investment adviser or a federally covered adviser shall not, directly or indirectly, do any of the following:

- (1) Employ a device, scheme, or artifice to defraud a client or prospective client.
- (2) Engage in an act, practice, or course of business that operates or could operate as a fraud or deceit upon a client or prospective client.
- (3) Acting as principal for his or her own account, knowingly sell any security or purchase any security from an investment advisory client, or acting as a broker for a person other than that client, knowingly effect any sale or purchase of any security for the account of that client, without disclosing to the client in writing before the completion of the transaction the capacity in which he or she is acting and obtaining the consent of the client in writing to the transaction. The prohibitions of this subdivision do not apply to a federally covered adviser or to any transaction with a customer of a broker-dealer if the broker-dealer is not acting as an adviser in relation to the transaction.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing all of the following:

- (1) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.
- (2) That no assignment of the investment advisory contract may be made by the investment adviser without the consent of the other party to the contract.
- (3) That the investment adviser, if a partnership, shall notify the other party to the investment advisory contract of any change in the membership of the partnership within a reasonable time after the change.

(c) It is unlawful for any investment adviser acting as a finder to do any of the following:

- (1) Take possession of funds or securities in connection with the transaction for which payment is made for services as a finder.

(2) Fail to disclose clearly and conspicuously in writing to all persons involved in the transaction as a result of his or her finding activities before the sale or purchase that the person is acting as a finder, any payment for services as a finder, the method and amount of payment, as well as any beneficial interest, direct or indirect, of the finder or a member of the finder's immediate family in the issue of the securities that are the subject of services as a finder.

(3) Participate in the offer, purchase, or sale of a security in violation of section 301. However, if the investment adviser makes a reasonable effort to ascertain if a registration has been effected or an exemption order granted in this state or to ascertain the basis for an exemption claim and does not have knowledge that the proposed transaction would violate section 301, his or her activities as a finder do not violate section 301.

(4) Participate in the offer, purchase, or sale of a security without obtaining information relative to the risks of the transaction, the direct or indirect compensation to be received by promoters, partners, officers, directors, or their affiliates, the financial condition of the issuer, and the use of proceeds to be received from investors, or fail to read any offering materials obtained. This section does not require independent investigation or alteration of offering materials furnished to the finder.

(5) Fail to inform or otherwise ensure disclosure to all persons involved in the transaction as a result of his or her finding activities of any material information which the finder knows, or in the exercise of reasonable care should know based on the information furnished to him or her, is material in making an investment decision, until conclusion of the transaction.

(6) Locate, introduce, or refer persons that the finder knows, or after a reasonable inquiry should know, are not suitable investors by reason of their financial condition, age, experience, or need to diversify investments.

(d) The finder is not required to independently generate information.

(e) Unless waived by the administrator, an investment adviser registered or required to be registered under this act shall, in accordance with the provisions of this section, furnish each advisory client and prospective advisory client with a written disclosure statement in a form established by the administrator by rule or order. An investment adviser shall deliver the disclosure statement required by this section to a client or prospective client not less than 48 hours prior to entering into an investment advisory contract with the client or prospective client, or at the time of entering into the investment advisory contract if the advisory client has a right to rescind the investment advisory contract without penalty within 5 business days of entering into the investment advisory contract.

(f) An investment adviser shall annually and without charge deliver or offer to deliver to each of its advisory clients the disclosure statement required by this section. Any disclosure statement required by this section and requested in writing by an advisory client pursuant to an offer to deliver must be mailed or delivered within 5 business days of the request. The delivery or offer to deliver required by this section need not be made to advisory clients receiving advisory services solely pursuant to a contract with an investment company registered pursuant to section 15(c) of the investment company act of 1940, 15 U.S.C. 80a-15.

(g) Subsection (b)(1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date, and does not apply to any person, except a trust, collective trust fund, or separate account referred to in section 3(c)(11) of the investment company act of 1940, 15 U.S.C. 80a-3, if the investment advisory contract relates to the investment of assets in excess of \$1,000,000.00, and the investment advisory contract provides for compensation based on the asset value of the company or fund under management averaged over a specific period and increasing and decreasing proportionately with the investment performance of the company or fund over a specific period in relation to the investment record of an appropriate index of securities prices, or another measure of investment performance as the administrator by rule, regulation, or order may specify. For purposes of determining whether subsection (b)(1) applies to an investment advisory contract, the point from which increases and decreases in compensation are measured shall be the fee which is paid or earned when the investment performance of the company or fund is equivalent to that of the index or other measure of performance, and an index of securities prices shall be considered appropriate unless the administrator by order shall determine otherwise. The definition of the term "assignment" and the other terms used in this section shall be the same as the definitions of those terms in the investment advisers act of 1940.

(h) Unless the administrator by rule or order permits taking or having custody, it is unlawful for any investment adviser not registered as a broker-dealer to take or have custody of any securities or funds of any client.

(i) It is unlawful for an agent registered with a broker-dealer to conduct business as an investment adviser or an investment adviser representative except through the broker-dealer with which the agent is registered and with the written consent of the broker-dealer filed with the administrator, in a form and subject to terms and conditions acceptable to the administrator.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.503 Imitation or false ingots, bullion, wafers, medals, artifacts, or instruments representing securities.

Sec. 103. It is unlawful for any person with intent to deceive to make, offer, or sell imitation or false ingots, bars of bullion, wafers, medals, or similar artifacts, or certificates or other instruments representing securities.

History: Add. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

PART II

REGISTRATION OF BROKER-DEALERS, AGENTS AND INVESTMENT ADVISORS

451.601 Registration required; exceptions.

Sec. 201. (a) A person shall not transact business in this state as a broker-dealer or agent unless registered under this act.

(b) A broker-dealer or issuer shall not employ an agent unless the agent is registered. The registration of an agent is not effective during any period when the agent is not associated with a particular broker-dealer registered under this act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities that make him or her an agent, the agent as well as the broker-dealer or issuer shall immediately notify the administrator in writing on a form prescribed by the administrator.

(c) A person shall not transact business in this state as an investment adviser unless the person meets 1 or more of the following:

(1) The person is registered under this act.

(2) The person is registered as a broker-dealer without the imposition of a condition under section 204(b)(5).

(3) The person's only clients in this state are insurance companies, federally covered advisers, banks, or trust companies.

(4) The person is an investment adviser who is not required to be registered as an investment adviser under the investment advisers act of 1940 if any of the following apply:

(A) The investment adviser's only clients in this state are other investment advisers, federally covered advisers, broker-dealers, or institutional investors.

(B) The investment adviser has no place of business in this state and the investment adviser directs business communications in this state to a person who is an existing customer and whose principal place of residence is not in this state.

(C) The investment adviser has no place of business in this state and the investment adviser during the preceding 12-month period has had not more than 5 clients, other than those specified in subparagraph (A), who are residents of this state.

(5) The person's only clients in this state are individuals who access the person's services through a 1-900 or toll-free telephone number and the services are generic in nature and not customized or specific to an individual and would not otherwise be considered the offering of investment advice.

(d) A registration under this section is effective upon order of the administrator and expires on December 31 of that year. If a person does not file an annual report, with the information required by the administrator, before December 31 of each year, the person shall not continue to transact business in this state as an investment adviser, broker-dealer, or agent.

(e) The registration provisions of this act do not apply to a county treasurer acting under his or her authority under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150.

(f) A person licensed or registered as a mortgage broker, mortgage lender, or mortgage servicer under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, is exempted from registering as a broker-dealer under this act for the offer or sale of mortgage loans as defined under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684. An employee of a person licensed or registered under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, is exempted from the agent registration provision of this act for the offer or sale of mortgage loans as defined under the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684, when acting as an employee of the licensed or registered person.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1985, Act 120, Imd. Eff. July 31, 1985;—Am. 1987, Act 175, Imd. Eff. Nov. 18, 1987;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1996, Act 349, Imd. Eff. June 28, 1996;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

451.602 Application for registration; contents; announcement; fees; registration of successor; irrevocable consent to service of process; capital and bond requirements; fingerprinting.

Sec. 202. (a) A broker-dealer, agent, or investment adviser may obtain an initial registration by filing with the administrator an application together with a consent to service of process pursuant to section 414(g). The application shall contain the information that the administrator by rule requires concerning any of the following:

- (1) The applicant's form and place of organization.
- (2) The applicant's proposed method of doing business.

(3) The qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee.

- (4) Any injunction or administrative order or conviction of a misdemeanor or of a felony.

- (5) The applicant's financial condition and history.

(b) The administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in 1 or more specified newspapers published in this state. Registration becomes effective upon order of the administrator. The administrator may by rule or order establish classes of or otherwise condition the registration of broker-dealers, agents, or investment advisers.

(c) Before October 1, 2003 or after September 30, 2007, an applicant for registration shall pay a filing fee and every registrant shall pay an annual fee of \$250.00 in the case of a broker-dealer, \$30.00 in the case of an agent, and \$150.00 in the case of an investment adviser. Before October 1, 2003 or after September 30, 2007, an applicant filing an application for registration of a successor pursuant to subsection (d) shall pay a filing fee of \$100.00 for the unexpired portion of the year. Before October 1, 2003 or after September 30, 2007, a registered agent who has terminated his or her connection with a broker-dealer shall pay a transfer fee of \$10.00 when transferring his or her connection to another broker-dealer. After September 30, 2003 and before October 1, 2007, an applicant for registration shall pay a filing fee and every registrant shall pay an annual fee of \$300.00 in the case of a broker-dealer, \$65.00 in the case of an agent, and \$200.00 in the case of an investment adviser. After September 30, 2003 and before October 1, 2007, an applicant filing an application for registration of a successor pursuant to subsection (d) shall pay a filing fee of \$125.00 for the unexpired portion of the year. After September 30, 2003 and before October 1, 2007, a registered agent who has terminated his or her connection with a broker-dealer shall pay a transfer fee of \$20.00 when transferring his or her connection to another broker-dealer.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence. The administrator may grant or deny the application.

(e) An applicant for registration under this act or an issuer who offers or sells a security in this state through any person shall file with the administrator, in the form prescribed by the administrator by rule or order, an irrevocable consent to service of process.

(f) Subject to the requirements of section 15 of the securities exchange act of 1934, 15 U.S.C. 78o, and section 222 of the investment advisers act of 1940, 15 U.S.C. 80b-18a, the administrator may by rule or order require a minimum capital for registered broker-dealers and investment advisers and prescribe a ratio between net capital and aggregate indebtedness. If the registrant fails to comply with the minimum net capital requirement, the registrant shall immediately cease all investment advisory or securities business operations and promptly notify the administrator of its failure to maintain the required net capital, of the steps to be taken to cure the net capital deficiency, and of its anticipated date of reopening business operations. The registrant shall not reactivate its securities or investment advisory business operations without prior notification to the administrator.

(g) Except as otherwise provided in this section, the administrator may require a fidelity bond from a broker-dealer, agent, or investment adviser who is required to be registered under this act. The administrator may not require a bond from a broker-dealer that is registered under the securities exchange act of 1934 or an investment adviser that maintains its principal place of business in a state other than this state if the

investment adviser is registered in that other state and is in compliance with that state's bonding requirements, if any.

(h) Unless the requirement is waived by rule or order of the administrator, all persons, including but not limited to partners, officers, directors, and agents employed by a broker-dealer or investment adviser who are regularly employed within this state shall, as a condition of employment, be fingerprinted. The administrator may process the fingerprint cards with the federal bureau of investigation and the department of state police either directly or through the national association of securities dealers. The fingerprints or information relating to the fingerprints shall be used for the official use of the administrator only.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001;—Am. 2003, Act 150, Imd. Eff. Aug. 8, 2003.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

451.602a Adviser's form ADV; notice filing.

Sec. 202a. (a) Except as provided in subsection (b), before conducting business in this state, a federally covered adviser shall file with the administrator or through the investment adviser registration depository a complete and current copy of the adviser's form ADV as filed with the securities and exchange commission. A notice filing shall be accompanied by a consent to service of process and a fee of \$150.00.

(b) The provisions of subsection (a) do not apply to a federally covered adviser that meets 1 of the following:

(1) He or she is a registered broker-dealer that is not subject to a condition imposed under section 204(b)(5).

(2) His or her only clients in this state are individuals who access his or her services through a toll-free telephone number and the services are generic in nature, are not customized or specific to an individual, and are not otherwise the offering of investment advice.

(c) A notice filing shall be effective upon receipt by the administrator and shall expire on December 31 of the year of filing. A notice filing may be renewed by the federally covered adviser filing with the administrator, either directly or through the investment adviser registration depository, a copy of the last annual update to form ADV that the adviser filed with the securities and exchange commission, together with an annual renewal fee of \$150.00.

(d) A federally covered adviser may terminate or withdraw a notice filing by notifying the administrator of the termination or withdrawal in writing. A termination or withdrawal is effective upon receipt by the administrator of the written notification.

(e) A federally covered adviser that acquires the business of an investment adviser or another federally covered adviser, or an investment adviser that acquires the business of a federally covered adviser, shall make a notice filing.

(f) If a federally covered adviser files an amendment with the securities and exchange commission to correct information that is or becomes inaccurate or incomplete in a document also filed with the administrator as part of a notice filing, the federally covered adviser shall file a copy of the amendment with the administrator, either directly or through the investment adviser registration depository.

(g) For purposes of this section, "notice filing" means the documents filed with the administrator under subsection (a).

History: Add. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.603 Preservation of records; filing financial reports; correction of information; examination of records; expenses; cooperation and exchange of information; summary suspension order; withdrawal or termination of registration; notice of appointment of trustee; notice of proceedings or sanctions; filing of advertising; restrictions.

Sec. 203. (a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books, and other records as the administrator by rule or order prescribes. All records required shall be preserved for 3 years unless the administrator by rule or order prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file financial reports as the administrator by rule prescribes.

(c) If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to reasonable periodic, special, or other examinations by representatives of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest or for the protection of investors. The expenses reasonably attributable to the examination of a matter arising under this section may be charged to the applicant or registrant involved. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as it deems it practicable in administering this subsection, may cooperate and exchange information with the securities and commodities administrators of other states, the securities and exchange commission, the commodity futures trading commission, any national securities exchange or national securities association registered under the securities exchange act of 1934, and other appropriate law enforcement agencies. Failure of a registrant to promptly provide records for inspection shall be cause for a summary suspension order until conclusion of the examination of the records.

(e) A registered broker-dealer or investment adviser may not withdraw or terminate its registration unless the registrant has complied with all of the following:

- (1) Filed a broker-dealer or investment adviser withdrawal form as prescribed by the administrator.
- (2) Delivered all securities and cash balances owing to all customers.
- (3) Delivered all securities owing to other broker-dealers.
- (4) Met other conditions as the administrator may by rule or order prescribe.
- (5) Received a withdrawal order from the administrator approving the withdrawal request.

(f) Notwithstanding the provisions of subsection (e):

(1) A registrant may temporarily cease business by promptly advising the administrator in writing on or before the date of temporary cessation of business of the fact of cessation, the reasons for cessation, and the date or basis for reopening of the business.

(2) A registrant or federally covered adviser subject to a merger or acquisition where all obligations of the predecessor registrant or federally covered adviser are acquired by or transferred to the new broker-dealer or investment adviser or federally covered adviser that continues the business in an uninterrupted fashion shall comply with section 202(d) or 202a(e), whichever is applicable, instead of this section.

(g) A registered broker-dealer shall immediately notify the administrator of the appointment of a trustee for the registrant pursuant to the securities investor protection act of 1970. A broker-dealer for whom such a trustee has been appointed shall file with the administrator a broker-dealer withdrawal form in accordance with subsection (e). A broker-dealer's registration continues effective until entry of the withdrawal order by the administrator.

(h) A registrant or applicant for registration shall promptly notify the administrator in writing if any proceedings have been commenced or any sanction imposed by securities administrators of other states, other state regulatory agencies, the securities and exchange commission, or any national securities exchange or national securities association registered under the securities exchange act of 1934.

(i) Except for advertising related to a federally covered security, the administrator may by rule or order require a broker-dealer or investment adviser to file all advertising for review and acceptance before first use.

(j) The administrator shall not require any of the following:

(1) That a broker-dealer that is registered under the securities exchange act of 1934 make, maintain, or preserve any records other than those required to be made, maintained, and preserved under the securities exchange act of 1934.

(2) That an investment adviser that maintains its principal place of business in another state make, maintain, or preserve any records other than those required by that state, provided that the investment adviser is registered in that state and is in compliance with any record-keeping requirements of that state.

(3) That a broker-dealer that is registered under the securities exchange act of 1934 file a financial report that is not required to be created and filed under the securities exchange act of 1934.

(4) That an investment adviser that maintains its principal place of business in another state create or file a financial report that is not required by that state, provided that the investment adviser is registered in that state and is in compliance with any financial reporting requirements of that state.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.604 Denial, suspension, or revocation of registration, or censure of registrant; grounds; postponement or suspension of registration pending final determination; order; notice; hearing; cancellation of registration or application; withdrawal from registration; conditions to entering of order; civil liability; violation.

Sec. 204. (a) The administrator may by order, if it finds the order in the public interest, deny, suspend, or revoke any registration, or censure a registrant, if it finds that 1 or more of the following apply:

(1) The applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(A) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact.

(B) Has violated or failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act.

(C) Has been convicted of any misdemeanor involving moral turpitude or any felony.

(D) Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business.

(E) Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser.

(F) Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying, suspending, or revoking registration as a broker-dealer, floor broker, agent, or investment adviser, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the securities and exchange commission suspending or expelling him or her from a national securities exchange or national securities association registered under the securities exchange act of 1934 or in the case of an individual, is subject to an order by the securities and exchange commission barring the individual from association with a broker-dealer or investment adviser or is the subject of an order of a national securities exchange or a national securities association registered under the securities exchange act of 1934 suspending or expelling him or her from membership, or is the subject of a United States post office fraud order. The administrator may by order deny, suspend, or revoke any broker-dealer or investment adviser registration if the applicant or registrant has been associated with a broker-dealer which was liquidated pursuant to the securities investor protection act of 1970, or if 1 or more of the applicant's or registrant's partners, officers, or directors have been associated with a broker-dealer liquidated under that act, unless the association was terminated 12 months or more before the commencement of litigation under that act, or unless the associated person establishes that he or she did not engage in dishonest or unethical business practices or violate or fail to comply with any provisions of this act or a predecessor act, or any rule or order under this act or a predecessor act, during association with that broker-dealer.

(G) Has engaged in dishonest or unethical business practices.

(H) Is insolvent, either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature; but the administrator may not enter an order against a broker-dealer or investment adviser under this subdivision without a finding of insolvency as to the broker-dealer or investment adviser.

(I) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

(J) Has delayed unreasonably delivery of securities to the extent that the registrant is in a position to control or direct the delivery of the securities. The burden of proof of inability to control or direct delivery shall rest with the registrant.

(K) Has represented that securities will be listed or that application for listing will be made, without basis in fact for the representation.

(L) Has induced excessive trading in a customer's account, or induced trading beyond the customer's known financial resources, if done with the intent to produce profits and commissions for the registrant or an agent in disregard of the customer's best interests as they reasonably appeared at the time of the transaction, and if improper under the then existing circumstances.

(M) Has recommended to a customer the purchase, sale, or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer on the basis of information furnished by the customer after reasonable inquiry as may be necessary under the circumstances concerning the customer's investment objectives, financial situation and needs, and other information known by the person making the recommendation.

(N) Has recommended speculative low priced securities to customers without knowledge of or an attempt to obtain information concerning the customer's other securities holdings, financial situation, investment objectives, and ability to bear the risks inherent in the purchase of those securities, or has recommended the securities in disregard of the information.

(O) Has executed a transaction on behalf of a customer without authority to do so.

(P) Has executed transactions pursuant to general discretionary authority for the account of a customer without first obtaining general discretionary authority in writing from the customer. However, written authority is not required if the discretionary authority relates solely to the execution of an order and is limited in scope.

(Q) Has acted on an agency basis for both the seller and the purchaser of a security without disclosing that fact to both on the confirmation.

(R) Has, while acting on an agency basis for a customer in any transaction, charged the customer more than a fair commission or service charge, taking into consideration all relevant circumstances including market conditions with respect to a security at the time of the transaction, the expense of executing the order and the value of any service rendered by reason of experience in and knowledge of the security, and the market for the security; or has sold at an excessive markup in relation to the market price of the security at the time of sale in light of the volume of securities traded at that time.

(S) Has entered into a transaction with a customer in a security at a price not reasonably related to the market price of the security.

(T) Has extended credit to a customer in violation of the securities exchange act of 1934 or the regulations of the federal reserve board.

(U) Has employed in connection with the purchase or sale of a security a manipulative or deceptive device or contrivance.

(V) Has sold a security to or purchased a security from a customer without disclosing that the broker-dealer is acting as a market maker in that security or has a substantial position in the market.

(W) Has, while registered as an agent or investment adviser, borrowed money from a customer.

(X) Has made unauthorized use of the funds of a customer; or has hypothecated a customer's securities contract without having a lien thereon unless written consent of the customer was first obtained.

(Y) Has, while registered as an agent, effected securities transactions when those transactions were not recorded on the records of the employer broker-dealer.

(Z) Has operated an account under a fictitious name.

(2) The applicant or registrant has failed reasonably to supervise its agents if it is a broker-dealer or its employees if an investment adviser.

(3) The applicant or registrant has failed to pay the proper filing fee. The administrator may enter only a denial order under this subdivision, and it shall vacate the denial order when the deficiency has been corrected.

(b) The following provisions govern the application of subsection (a)(1)(I):

(1) The administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer if he or she is an individual or an agent of the broker-dealer.

(2) The administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser if he or she is an individual or any other person who represents the investment adviser in doing any of the acts which make him or her an investment adviser.

(3) The administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When it finds that an applicant for registration as a broker-dealer is not qualified as an investment adviser, it may by order condition the applicant's registration as a broker-dealer upon his or her not transacting business in this state as an investment adviser.

(6) The administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him or her an investment adviser.

(c) The administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that the order has been entered and of the reasons therefor and that within 15 days after the receipt of a written request the matter will be set down for hearing. If a hearing is not requested and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

(e) The administrator may institute a revocation or suspension proceeding under subsection (a)(1)(B) within 1 year after withdrawal from registration of a broker-dealer, agent, or investment adviser became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) An order may not be entered under any part of this section except the first sentence of subsection (c) without all of the following:

(1) Appropriate prior notice to the applicant or registrant, as well as to the employer or prospective employer if the applicant or registrant is an agent.

(2) Opportunity for hearing.

(3) Written findings of fact and conclusions of law.

(g) The administrator may by order, if it finds the order to be in the public interest, impose a civil fine of \$1,000.00 on any registrant if it finds that the registrant, or in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser, has engaged in conduct prohibited by subsection (a)(1)(B), (G), or (J) to (Z).

(h) A violation of a provision of this section or action of the administrator pursuant to this section shall not subject a registrant to civil liability to a customer of the registrant unless that violation or action is contrary to another provision of this act.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

PART III REGISTRATION OF SECURITIES

451.701 Sale of securities; registration requirement.

Sec. 301. It is unlawful for any person to offer or sell any security in this state unless 1 of the following is met:

(1) It is registered under this act.

(2) The security or transaction is exempted under section 402.

(3) The security is a federally covered security.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.702 Securities; registration by notification; statement; contents; additional documents; information; effectiveness; copy to be sent to offeree.

Sec. 302. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under section 303:

(1) Any security whose issuer and any predecessors have been in continuous operation for at least 5 years if (A) there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest or dividends on any security of the issuer, or any predecessor, with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and any predecessors during the past 3 fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least 5% of the amount of such outstanding securities, as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price, or (ii) which, if the issuer and any predecessors have not had any security of the type specified in clause (i) outstanding for 3 full fiscal years, equal at least 5% of the amount, as measured in clause (i), of all securities which will be outstanding if all the securities being offered or proposed to be offered, whether or not they are proposed to be registered or offered in this state, are issued.

(2) Any security, other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, registered for nonissuer distribution if (A) any security of the same class has ever been registered under this act or a predecessor act, or (B) the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

(1) A statement demonstrating eligibility for registration by notification;

(2) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state, or foreign jurisdiction, and the date of its organization; and the general character and location of its business;

(3) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) A description of the security being registered;

(5) The information and documents specified in clauses (8), (10), (11) and (12) of section 304 (b); and

(6) In the case of any registration under section 302 (a) (2) which does not also satisfy the conditions of section 302 (a) (1), a balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement, and a summary of earnings for each of the 2 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 2 years.

(c) If no stop order is in effect and no proceeding is pending under section 306, a registration statement under this section automatically becomes effective at 3 p.m., eastern standard time, on the twentieth full day after the filing of the registration statement or the last amendment, or at such earlier time as the administrator determines.

(d) The administrator may by rule or order require as a condition of registration under this section that a copy of the registration statement filed under subsection (b) be given or sent to each person to whom an offer is made before or concurrently with such offer.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.703 Registration by coordination.

Sec. 303. (a) Any security for which a registration statement has been filed under the securities act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305(c) and the consent to service of process required by section 414(g):

(1) Three copies of the latest form of prospectus filed under the securities act of 1933;

(2) If the administrator by rule or otherwise requires, a copy of the articles of incorporation and bylaws, or their substantial equivalents, currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the administrator requests, any other information, or copies of any other documents, filed under the securities act of 1933; and

(4) An undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly, and in any event not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied:

(1) No stop order is in effect and no proceeding is pending under section 306.

(2) The registration statement has been on file with the administrator for at least 20 days and all subsequent amendments except pricing amendments have been on file for at least 10 days.

(3) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for 2 full business days or such shorter period as the administrator permits by rule or otherwise and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a posteffective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and posteffective amendment with respect to the price amendment, the administrator may enter a stop order,

without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if it promptly notifies the registrant by telephone or telegram, and promptly confirms by letter or telegram when it notifies by telephone, of the issuance of the order. If the registrant proves compliance with the requirements of this subsection as to notice and posteffective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in subsection (c)(2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether it then contemplates the institution of a proceeding under section 306; but this advice by the administrator does not preclude the institution of such a proceeding at any time.

(e) The registrant may waive automatic effectiveness by written notice to the administrator. The waiver may be withdrawn by filing a written notice of withdrawal 5 business days before the effective date of the withdrawal.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979.

451.704 Securities; registration by qualification; statement; contents; additional documents; information; effectiveness; prospectus to be sent to offeree; report; deposit.

Sec. 304. (a) Any security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 305 (c) and the consent to service of process required by section 414 (g):

(1) With respect to the issuer and any significant subsidiary: its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

(2) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address and principal occupation for the past 5 years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected.

(3) With respect to persons covered by clause (2): the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries and affiliates, to all those persons in the aggregate.

(4) With respect to any person owning of record, or beneficially if known, 10% or more of the outstanding shares of any class of equity security of the issuer: the information specified in clause (2) other than his occupation.

(5) With respect to every promoter if the issuer was organized within the past 3 years: the information specified in clause (2), any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment.

(6) With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; a description of any material interest in any material transaction with the issuer or any significant subsidiary effected within the past 3 years or proposed to be effected; and a statement of his reasons for making the offering.

(7) The capitalization and long-term debt, on both a current and a pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else, for which the issuer or any subsidiary has issued any of its securities within the past 2 years or is obligated to issue any of its securities.

(8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else

of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(9) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition, including the cost of borrowing money to finance the acquisition.

(10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in clause (2), (4), (5), (6) or (8) and by any person who holds or will hold 10% or more in the aggregate of any such options.

(11) The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past 2 years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets, including any such litigation or proceeding known to be contemplated by governmental authorities.

(12) A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering.

(13) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial equivalents, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(14) A signed or conformed copy of an opinion of counsel as to the legality of the security being registered, with an English translation if it is in a foreign language, which shall state whether the security when sold will be legally issued, fully paid and nonassessable, and, if a debt security, a binding obligation of the issuer.

(15) The written consent of any accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if any such person is named as having prepared or certified a report or valuation, other than a public and official document or statement, which is used in connection with the registration statement.

(16) A balance sheet of the issuer as of a date within 4 months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(17) Such additional information as the administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the administrator so orders.

(d) The administrator may by rule or order require as a condition of registration under this section that a prospectus be sent or given to each person to whom an offer is made. The administrator may by rule or order fix the requirements as to the use, content, revision and supplementation of the prospectus.

(e) The administrator may by rule or order require as a condition of registration under this section that a report by an accountant, engineer, appraiser or other professional person be filed and may require that the estimated cost of such report be deposited in advance by the applicant in an escrow account. The administrator may also designate an employee to make an investigation of the books, records and affairs of any applicant for registration by qualification and may require the estimated cost thereof to be deposited in advance by the applicant in an escrow account.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.704a Small company offering registration.

Sec. 304a. (1) A security that is exempt from registration under the federal exemption set forth in 17 C.F.R. 230.504 may be registered under this section. An issuer eligible to register a security under this section shall use a registration form approved by the administrator as the disclosure document for the offering. A registration under this section shall be known as a small company offering registration.

(2) An application for a small company offering registration shall comply with this section. The offering is exempt pursuant to 17 C.F.R. 230.504, 17 C.F.R. 230.251, or section 3(a)(11) of the securities act of 1933. However, the administrator may waive provisions of this section.

(3) A small company offering registration under this section is not available to either of the following:

(a) Investment companies subject to the investment company act of 1940.

(b) Issuers subject to the reporting requirements of section 13 or section 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o.

(4) All of the following provisions apply to the availability of a small company offering registration:

(a) A small company offering registration shall not be utilized by the following issuers and programs unless the administrator grants written permission based upon a showing that adequate disclosure can be made to investors using the small company offering registration format:

(i) Holding companies, or companies that have a principal purpose of owning stock in, or supervising the management of, other companies.

(ii) Portfolio companies, such as real estate investment trusts.

(iii) Issuers with complex capital structures.

(iv) Commodity pools.

(v) Equipment leasing programs.

(vi) Real estate programs.

(b) A small company offering registration under this section is available only to the issuer of the securities and not to any affiliate of that issuer or to any other person for resale of the issuer's securities. In addition, each of the following requirements shall be met:

(i) The issuer is a domestic corporation, a foreign corporation, or a manager managed limited liability company organized under the laws of any state, territory, or possession of the United States or province or territory of Canada. The administrator may allow other entities to file a small company offering registration.

(ii) The offering is not a blind pool or other offering for which the specific business to be engaged in or property to be acquired by the issuer cannot be specified.

(iii) The offering price for securities; the exercise price if the securities offered are options, warrants, or rights for common stock or membership interests; or the conversion price if the securities are convertible into common stock or units of membership interest is at least \$1.00 per share or unit of membership interest. The issuer shall enter into an agreement with the administrator that the issuer will not split any class of security or declare a dividend for 2 years after the effective date of the registration if such action has the effect of lowering the price below \$1.00 per share.

(iv) The aggregate offering price of the securities offered, within or outside this state, is not more than \$1,000,000.00, or a greater amount established under 17 C.F.R. 230.504, or \$5,000,000.00 if a federal exemption is granted to this state pursuant to section 3(b) of the securities act of 1933, 15 U.S.C. 77c, or an amount authorized under 17 C.F.R. 230.251, if the issuer is utilizing a registration form approved by the administrator.

(c) A small company offering registration under this section is only available for debt offerings if the issuer can demonstrate a reasonable ability to service its debt.

(5) Except as otherwise provided in this subsection, financial statements shall be prepared in accordance with generally accepted accounting principles or the Canadian equivalent. If the issuer has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. Annual financial statements shall be audited by independent certified public accountants or chartered accountants, as appropriate, except that annual financial statements in lieu of being audited may be reviewed by independent certified public accountants or chartered accountants, in accordance with the accounting and review services standards promulgated by the American institute of certified public accountants or the Canadian equivalent, consistently applied, rather than audited, if all of the following conditions are satisfied:

(a) The issuer has not previously sold securities through an offering involving general advertising or the solicitation of prospective investors.

(b) The issuer has not been previously required under federal, state, provincial, or territorial securities laws to provide audited financial statements in connection with any sale of its securities.

(c) The aggregate amount of all previous sales of securities by the issuer within the last 24 months does not exceed \$1,000,000.00.

(d) The amount of the small company offering for which a small company registration is sought does not exceed \$1,000,000.00.

(6) A small company offering registration under this section is not available if any of the following provisions apply to the issuer, to any of the issuer's officers, directors, managers, 10% security holders, promoters, or selling agent of the securities to be offered, or to any officer, director, or partner of the selling agent of the securities to be offered:

(a) The person has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within 5 years before the small company offering registration application is filed.

(b) The person has been convicted of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including any of the following, within 5 years before the small company offering registration application is filed:

(i) Forgery.

(ii) Embezzlement.

(iii) Obtaining money under false pretenses.

(iv) Larceny.

(v) Conspiracy to defraud.

(c) The person is currently subject to either of the following:

(i) A state administrative enforcement order or judgment entered against that person by a state securities administrator or the securities and exchange commission within 5 years before the small company offering registration application is filed.

(ii) A federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts or failing to state material facts, was found and the order or judgment was entered within 5 years before the small company offering registration application is filed.

(d) The person is subject to a federal or state administrative enforcement order or judgment that prohibits, denies, or revokes the use of any exemption for registration in connection with the offer, purchase, or sale of securities.

(e) The person is currently subject to a court order, judgment, or decree entered within 5 years before the small company offering registration application is filed that does either of the following:

(i) Temporarily, preliminarily, or permanently restrains or enjoins that person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security.

(ii) Involves the making of a false filing with any state or with the securities and exchange commission.

(f) A person who is disqualified under this subsection shall not act in any capacity other than that for which the person is licensed or registered. A disqualification under this subsection is automatically waived if the administrator or other state or federal agency that created the basis for disqualification determines, upon a showing of good cause, that it is not necessary under the circumstances to deny the exemption.

(g) Subdivisions (a), (b), (c), and (e) do not apply if the person disqualified under those subdivisions is licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against that person or if the broker-dealer who employs the person is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to that person.

(7) An applicant who files a small company offering registration application in this state shall not split its securities or declare a stock or membership dividend for any security issued under this section for 2 years after the registration is effective without the prior written approval of the administrator.

(8) In addition to a properly completed application form, an applicant for a small company offering registration under this section shall file all of the following exhibits with the administrator:

(a) The form of the selling agency agreement.

(b) The issuer's articles of incorporation or other charter documents and all amendments.

(c) The issuer's bylaws or operating agreement, as amended.

(d) Copies of any resolutions by directors or managers setting forth terms and provisions of securities to be issued.

(e) Any indenture, form of note, or other contractual provision containing terms of notes or other debt or of options, warrants, or rights to be offered.

(f) A specimen of the security to be offered, including any legend restricting resale.

(g) Consent to service of process accompanied by an appropriate resolution.

- (h) Copies of all material directed or furnished to investors in the offering.
 - (i) The form of escrow agreement for escrow of proceeds. An escrow agreement shall comply with all of the following:
 - (i) The administrator may require that the issuer impound the proceeds from the sale of a registered security in this state until the issuer receives a specified amount from the sale of that security in this state or elsewhere that is sufficient to accomplish the stated purposes of the offering or until the issuer's stipulated requirements are met.
 - (ii) The administrator may require that the issuer return any impounded proceeds, together with any accrued interest, to investors if the issuer fails to raise the specified amount while the registration is effective or within 1 year or if the issuer's stipulated requirements are not met.
 - (iii) A bank or trust company may act as the depository or escrow agent for impounded proceeds. Checks, drafts, and money orders shall be made payable to the depository. If a broker-dealer is acting as selling agent for the issuer, the broker-dealer shall promptly remit payments made directly to the broker-dealer to the depository or escrow agent.
 - (iv) A request to release impounded funds shall be in writing. The request shall confirm compliance with the registration and shall be accompanied by a statement from the depository or escrow agent setting forth the total amount on deposit.
 - (j) Consent to inclusion in the disclosure document of an accountant's report.
 - (k) Consent to inclusion in the disclosure document of a tax advisor's opinion or a description of tax consequences.
 - (l) Consent to inclusion in the disclosure document of an evaluation by a licensed attorney of any pending or anticipated litigation or administrative action.
 - (m) The form of any subscription agreement for the purchase of securities in the offering.
 - (n) An opinion of a licensed attorney that the securities to be sold in the offering are duly authorized and binding on the issuer in accordance with the terms of the securities.
 - (o) A list of the residence street addresses of officers, directors, managers, and principal security holders.
- (9) Information provided to the administrator under subsection (8) is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.
- (10) An applicant for a small company offering registration under this section shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but in no case less than \$100.00 or more than \$1,250.00, to the administrator with the application form. If the applicant withdraws the application before the small company offering registration is effective or before a preeffective stop order is issued, the administrator shall retain the entire filing fee if review of the application has commenced, or shall retain a \$100.00 fee and refund the balance of the filing fee to the applicant if review of the application has not commenced.
- (11) A small company offering registration statement filed under this section is effective for 1 year from its effective date, except during the time a stop order is in effect under this section. A small company offering registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the small company offering registration statement is effective. A small company offering registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A small company offering registration statement may be withdrawn otherwise only in the discretion of the administrator.
- (12) For the period that a small company offering registration statement is effective, the administrator may by rule or order require the person who filed the small company offering registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the small company offering registration statement and to disclose the progress of the offering.
- (13) A small company offering registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective small company offering registration statement as proposed to be offered, the person or persons who filed the small company offering registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the small company offering registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the small company offering registration statement, if any,

plus a late registration fee of \$250.00. Upon the election and payment, the small company offering registration statement shall be considered to have been in effect with respect to those securities. Every person filing an amendment under this section shall pay a filing fee, calculated in the manner specified in subsection (10), with respect to the additional securities.

(14) Fees, expense reimbursements, and fines received under this section shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(15) Fees and fines received under this section shall not be expended for partisan political activity.

(16) All of the following apply to orders under this subsection:

(a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any small company offering registration statement if it finds that the order is in the public interest and any of the following:

(i) The small company offering registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under subsection (13) as of its effective date, or any report under subsection (12) is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(ii) Any provision of this section or any rule, order, or condition lawfully imposed under this section has been violated in connection with the offering by any of the following:

(A) The person filing the small company offering registration statement.

(B) The issuer, any officer, director, or manager of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the small company offering registration statement is directly or indirectly controlled by or acting for the issuer.

(C) Any underwriter.

(iii) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court entered under any other federal or state act applicable to the offering. However, the administrator shall not institute a proceeding against an effective small company offering registration statement under this subdivision more than 1 year from the date of the order or injunction relied on, and may not enter an order under this subdivision on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section.

(iv) The issuer's enterprise or method of business includes or would include activities that are illegal where performed.

(v) The offering has worked or has tended to work a fraud, deception, or imposition or would operate to work a fraud, deception, or imposition.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the small company offering registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subdivision (c) that the order has been entered, the reasons that the order has been entered, and that within 15 days after the receipt of a written request the matter will be scheduled for hearing. If no hearing is requested and none is ordered by the administrator, the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in subdivision (c), may modify, vacate, or extend the order until final determination.

(c) A stop order shall not be entered under this section except under the first sentence of subdivision (b) without all of the following:

(i) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(ii) Opportunity for hearing.

(iii) Written findings of fact and conclusions of law.

(d) The administrator may vacate or modify a stop order if it finds that the conditions that prompted entry of the stop order have changed or that it is otherwise in the public interest to vacate or modify the stop order.

History: Add. 1996, Act 529, Imd. Eff. Jan. 13, 1997;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.705 Registration statement; filing; fee; contents; conditions; effective period; withdrawal; reports, information, and progress of offering; amendment; election; registration fee; filing fee; disposition of fees, expense reimbursements, and fines;

prohibition; applicability of section to securities registered under § 451.704a.

Sec. 305. (a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee of 1/10 of 1% of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$100.00 or more than \$1,250.00. When an application for registration is withdrawn before the effective date or a preeffective stop order is issued, the administrator shall retain a fee of \$100.00 if the initial review has not been commenced, and the full filing fee after review has been commenced.

(c) Every registration statement shall specify all of the following:

(1) The amount of securities to be offered in this state.

(2) The states in which a registration statement or similar document in connection with the offering has been or is to be filed.

(3) Any withdrawal or any adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

(d) Any document filed under this act or a predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) The administrator may by rule or order require as a condition of registration by qualification or coordination both of the following:

(1) That any security issued or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow.

(2) That the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by rule or order determine the conditions of any escrow or impounding required under this subsection, and, after prior notice and opportunity for hearing, may order the cancellation in whole or in part of any security deposited in escrow if necessary for the protection of security holders. The administrator may not reject a depository solely because of location in another state.

(g) The administrator may by rule or order impose conditions under which a security registered by qualification may be sold, if it finds that the conditions are reasonable and in the public interest.

(h) Every registration statement is effective for 1 year from its effective date, except during the time a stop order is in effect under section 306. A registration statement may be extended by the administrator by rule or order. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective or the issuer has a class of securities that have been subject to the reporting requirements of section 13 or 15(d) of title I of the securities exchange act of 1934, 15 U.S.C. 78m and 78o, for not less than 9 months before the transaction and all reports required by that act have been filed for that period. A registration statement may not be withdrawn for 1 year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

(i) For the period that the registration statement is effective, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(j) A registration statement relating to a security may be amended after its effective date to increase the securities specified as proposed to be offered. As to securities not yet sold, an amendment becomes effective upon the administrator's order. In the case of securities that are sold in an amount in excess of the amount or number of securities specified in an effective registration statement, as proposed to be offered, the person or persons who filed the registration statement may, in accordance with rules the administrator shall promulgate as necessary or appropriate in the public interest and for the protection of investors, elect to have the registration of those securities considered effective as of the time of their sale, upon payment to the administrator within 6 months after the sale of a registration fee equal to the difference between the registration fee previously paid and the amount of the fee that would have otherwise been applicable to those additional securities if they had been included in the registration statement, if any, plus a late registration fee of \$250.00. Upon the election and payment, the registration statement shall be considered to have been in effect with respect to those shares. Every person filing an amendment under this subsection shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities.

(k) Fees, expense reimbursements, and fines received under this act shall be deposited in the state treasury to the credit of the administrator, to be used pursuant to legislative appropriation by the administrator in carrying out those duties required by law. After the payment of the amounts appropriated by the legislature for the necessary expenses incurred in the administration of this act, the money remaining shall be credited to the general fund of this state.

(l) Fees and fines received under this act shall not be expended for partisan political activity.

(m) This section does not apply to securities registered under section 304a.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

451.706 Registration statement; denial, suspension or revocation by administrator's stop order; findings; postponement or suspension; notice; hearing; requirements for entry of stop order; vacating or modifying stop order; applicability of section to securities registered under § 451.704a.

Sec. 306. (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if it finds that the order is in the public interest and any of the following:

(1) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 305(j) as of its effective date, or any report under section 305(i) is incomplete in any material respect or contains any statement that was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact.

(2) Any provision of this act or any rule, order, or condition lawfully imposed under this act has been violated in connection with the offering by any of the following:

(i) The person filing the registration statement.

(ii) The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer.

(iii) Any underwriter.

(3) The security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court entered under any other federal or state act applicable to the offering. However, the administrator may not institute a proceeding against an effective registration statement under this clause more than 1 year from the date of the order or injunction relied on, and may not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts that would currently constitute a ground for a stop order under this section.

(4) The issuer's enterprise or method of business includes or would include activities that are illegal where performed.

(5) The offering has worked or has tended to work a fraud, deception, or imposition or would operate to work a fraud, deception, or imposition, or the offering is on unfair terms.

(6) The offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options. With respect to the sale of periodic payment plan certificates for the purchase of securities of investment companies registered under the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-64, commissions up to 9% of the total payments to be made during the entire term of the plan, and deductions for those commissions from any of the first 12 monthly payments, or their equivalent, up to 1/2 thereof, shall be allowed.

(7) If a security is sought to be registered by notification, it is not eligible for that registration.

(8) If a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 303(b)(4).

(9) The applicant or registrant has failed to pay the proper filing fee. However, the administrator may enter only a denial order under this clause and it shall vacate that order if the deficiency is corrected.

(b) The administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in subsection (c) that the order has been entered, the reasons that the order has been entered, and that within 15 days after the receipt of a written request the matter

will be scheduled for hearing. If no hearing is requested and none is ordered by the administrator, the order shall remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in subsection (c), may modify, vacate, or extend the order until final determination.

(c) No stop order may be entered under this section except under the first sentence of subsection (b), without all of the following:

(1) Appropriate prior notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered.

(2) Opportunity for hearing.

(3) Written findings of fact and conclusions of law.

(d) The administrator may vacate or modify a stop order if it finds that the conditions that prompted entry of the stop order have changed or that it is otherwise in the public interest to vacate or modify the stop order.

(e) This section does not apply to securities registered under section 304a.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997.

451.707 Preliminary prospectus.

Sec. 307. An applicant for registration or exemption may deliver a preliminary prospectus to offerees before the effectiveness of a registration or exemption order if either of the following conditions is satisfied:

(a) If the applicant has filed a registration statement under section 302 or 303 and a stop order is not in effect under this act or the securities act of 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r and 77s to 77aa, or a public proceeding or examination looking toward a stop order is not pending under this act or the securities act of 1933.

(b) If the applicant has filed a registration statement under section 304 or 304a or has filed a request for an exemption order under section 402 more than 5 business days before delivery of a preliminary prospectus, and the administrator by written notice to the applicant has not objected to the use of the preliminary prospectus, or a stop order, proceeding, or examination is not in effect or pending.

History: Add. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1996, Act 529, Imd. Eff. Jan. 13, 1997.

451.708 Registered security or filed registration statement; notice filing; projection of nonexempt sales; reports; penalty.

Sec. 308. (a) Any security issued by an investment company, other than a unit investment trust, that is registered or that has filed a registration statement under the investment company act of 1940 may be offered for sale and sold into, from, or within this state upon the annual receipt by the administrator of all of the following:

(1) A notice as prescribed by the administrator. A copy of the federal registration statement filed with the securities and exchange commission under the securities act of 1933 may be provided to the administrator in lieu of the notice.

(2) Payment of a fee of \$500.00.

(3) A consent to service of process.

(b) Any security issued by a unit investment trust that is registered or that has filed a registration statement under the investment company act of 1940 as an investment company may be offered for sale and sold into, from, or within this state for an indefinite period commencing upon the later of the trust's effectiveness with the securities and exchange commission or the administrator's receipt of a notice as prescribed by the administrator and a 1-time notice filing fee of \$500.00.

(c) Each of the following applies to a notice filing under subsection (a):

(1) A notice filing is effective for a period of 1 year, commencing upon the later of the effectiveness of the offering with the securities and exchange commission or the administrator's receipt of the notice filing.

(2) A notice filing may be renewed for an additional 1-year period by filing a current form NF and the fee required by subsection (h) before the expiration of the 1-year effective period. The renewal is effective upon the expiration of the prior notice period.

(3) A notice filing may be terminated by filing with the administrator a notice of termination as prescribed by the administrator. The termination is effective upon the administrator's receipt of the notice of termination.

(d) With respect to any security that is a federally covered security under the securities act of 1933, the issuer shall file a notice on securities and exchange commission form D or a form approved by the administrator; with a consent to service of process signed by the issuer, no later than 15 days after the first sale of a federally covered security in this state, together with a nonrefundable filing fee of \$100.00.

(e) The administrator, by rule or order, may require the filing of any document filed with the securities and exchange commission under the securities act of 1933, with respect to a federally covered security under the

securities act of 1933, together with a nonrefundable filing fee of \$100.00.

(f) The administrator may issue a stop order suspending the offer and sale of a federally covered security, except a federally covered security under section 18(b)(1) of the securities act of 1933, 15 U.S.C. 77r, if it finds that the order is in the public interest and there is a failure to comply with this section.

(g) The administrator, by rule or order, may waive any or all of the provisions of this section.

(h) All of the following apply to the renewals of a notice filing under subsection (c):

(1) Subject to adjustment under subdivision (3), the fee for the renewal shall be 1 of the following:

(A) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of \$250,000.00 or less, \$100.00.

(B) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$250,000.00 but not more than \$700,000.00, \$400.00.

(C) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$700,000.00 but not more than \$1,000,000.00, \$800.00.

(D) If the issuer projects nonexempt sales of the security in this state during the 1-year renewal period of more than \$1,000,000.00, \$1,400.00.

(2) For purposes of subdivision (1), an issuer's projection of nonexempt sales of a security must be reasonable and based on any facts known to the issuer at the time of renewal that may affect sales of the security, including, but not limited to, nonexempt sales of the security in this state during the current 1-year notice filing period.

(3) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period exceed the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for that 1-year notice filing period, the issuer is not required to amend its projections or pay an additional fee for that notice filing period. However, the fee for renewal of the notice filing shall be the greater of the following:

(A) The renewal fee determined under subdivision (1).

(B) A renewal fee determined under subdivision (1), using actual sales during the current notice filing period as the projected sales for the renewal notice filing period.

(4) If an issuer's nonexempt sales of a security in this state during a 1-year notice filing period are less than the projections for that period that the issuer had submitted to the administrator for determination of the issuer's renewal fee for the 1-year notice filing period, the issuer is not entitled to a refund of any part of the renewal fee for that period or adjustment of the renewal fee for any renewal period.

(5) Upon written request of the administrator, an issuer shall provide sales reports showing the issuer's nonexempt sales of a security in this state for the current and 2 previous 1-year notice filing periods, but the issuer is not otherwise required to provide a sales report to the administrator in connection with a renewal of a notice filing.

(6) If the administrator determines that for 2 consecutive 1-year notice filing periods an issuer's nonexempt sales of a security in this state exceeded the issuer's sales projections for that period, the administrator may assess the issuer a penalty in the amount of the renewal fees the issuer would have paid under subdivision (1) if its projections had been accurate. This penalty is in addition to an increased fee for renewal under subdivision (3), if any.

History: Add. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

PART IV

GENERAL PROVISIONS, DEFINITIONS AND EXEMPTIONS

451.801 Definitions.

Sec. 401. As used in this act, unless the context otherwise requires:

(a) "Administrator" means the office of financial and insurance services of the department of consumer and industry services.

(b) "Affiliate" means a person that directly or indirectly through 1 or more intermediaries controls, is controlled by, or is under common control with a specified person.

(c) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in (1) effecting transactions in a security exempted by section 402(a)(1), (2), (3), (4), (5), (9), or (10), (2) effecting transactions exempted by section 402(b), (3) effecting transactions in a covered security as defined in section 18(b)(3) or 18(b)(4)(D) of the securities act of 1933, 15 U.S.C. 77r, or (4) effecting transactions with existing employees, partners, officers, or directors of the issuer or any of its subsidiaries if, in connection with all of these 4 cases, no commission is paid or given directly or indirectly for

soliciting any person in this state. "Agent" does not include an officer or general partner of an issuer whose securities are registered under the provisions of this act, who represents the issuer in effecting transactions in the registered securities, if no commission is paid or given directly or indirectly for soliciting any person in this state. "Agent" does not include a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). "Agent" does not include a person whose transactions in this state are limited to only those transactions set forth in section 15(h)(2) of the securities exchange act of 1934, 15 U.S.C. 78o. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he or she otherwise comes within this definition. The administrator may by rule or order exclude other persons from the definition of the word "agent".

(d) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. "Broker-dealer" does not include (1) an agent, (2) an issuer, (3) a bank, savings institution, or trust company, (4) a person who has no place of business in this state if (A) he or she effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of 12 consecutive months he or she does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in clause (A) of this subdivision, whether or not the offeror or any of the offerees is then present in this state, or (5) a person acting solely as a finder and registered pursuant to this act or acting as a finder under a transaction exempt pursuant to section 402(b)(19). The administrator may by rule or order exclude other persons from the definition of the word "broker-dealer".

(e) "Commission" means any payment in cash, securities, or goods for offering or selling, promise, or commitment to provide payment in the future for offering or selling, or any other similar payment. Commission does not include a real estate commission commensurate with fees paid in the area for similar services, paid to licensed real estate brokers solely for real estate services which have been rendered, or payment by a person to a lawyer or accountant in connection with advice or recommendations made by a lawyer or accountant to the client with whom the lawyer or accountant has an established professional relationship, if disclosure of the payment and the interest of the lawyer or accountant in the transaction or in the issuer or any affiliate of the issuer, is made in writing to the client before the sale. Officers, directors, and partners of an issuer or purchaser, or persons occupying a similar status shall not be considered a finder if their contact was purely incidental and their compensation was not directly or indirectly tied to or conditioned upon involvement in securities solicitation or purchase.

(f) "Direct or indirect compensation or remuneration" means any payment, receipt or use of proceeds of an offering for the benefit of the promoter, general partners, officers or directors, or persons occupying similar positions or their affiliates, any receipt, payment, or use of securities or goods by those persons at less than the amount public investors paid for the securities or goods, or any markup charged on sale of property to the entity raising capital, any advantageous contractual relationships, any real estate commission, or other similar payments or arrangements to those persons.

(g) "Federally covered adviser" means a person that is registered under section 203 of the investment advisers act of 1940. The term does not include a person excluded from the definition of investment adviser under subdivision (l)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (11).

(h) "Federally covered security" means any security that is a "covered security" under the securities act of 1933 or rules or regulations promulgated under that act.

(i) "Finder" means a person who, for consideration, participates in the offer to sell, sale, or purchase of securities or commodities by locating, introducing, or referring potential purchasers or sellers. Finder does not include a person whose actions are solely incidental to a transaction exempt pursuant to section 402(b)(19). The administrator may by rule or order exclude other persons from this definition.

(j) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(k) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(l) "Investment adviser" means any person who, for consideration, engages in the business of advising others, either directly or through publications or writings, as to the value of securities, or as to the advisability of investing in, purchasing, or selling securities, who, for consideration and as a part of a regular business, issues or promulgates analyses or reports concerning securities, or who acts as a finder in conjunction with the offer, sale, or purchase of a security. "Investment adviser" does not include any of the following:

(1) A bank, savings institution, or trust company.

(2) A lawyer, accountant, engineer, geologist, geophysicist, or teacher whose performance of these services is solely incidental to the practice of his or her profession.

(3) A broker-dealer or a registered agent acting on behalf of a broker-dealer whose performance of these services is solely incidental to the conduct of his or her business as a broker-dealer and who receives no special compensation for the services.

(4) A publisher, employee, or columnist of a newspaper, news magazine, or business or financial publication, or an owner, operator, producer, or employee of a cable, radio, or television network, station, or production facility if, in either case, the financial or business news published or disseminated is made available to the general public and the content does not consist of rendering advice on the basis of the specific investment situation of a client.

(5) A person who has no place of business in this state if either of the following applies:

(A) His or her only clients in this state are other investment advisers, federally covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts the assets of which are managed by a bank or trust company or other institutional manager, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.

(B) During any period of 12 consecutive months he or she does not have more than 5 clients in this state other than those specified in subparagraph (A).

(6) A person excluded from the definition of investment adviser under section 202(a)(11) of the investment advisers act of 1940, 15 U.S.C. 80b-2.

(7) Any other persons not within the intent of this subdivision as the administrator may by rule or order designate.

(8) A trustee whose custody of assets is pursuant to judicial appointment, or appointment under a trust indenture or agreement, and who does not hold himself or herself out to the general public as giving advice to others with respect to securities and who maintains close contact with the personal financial affairs of his or her clients as a part of his or her fiduciary responsibilities, or a person who gives advice only to such a trustee.

(9) A county treasurer acting pursuant to his or her authority under the local government investment pool act, 1985 PA 121, MCL 129.141 to 129.150.

(10) A person who is a federally covered adviser.

(11) A person who is employed by or associated with an investment adviser.

(m) "Investment adviser representative" means a partner, officer, or director, or a person occupying a similar status or performing similar functions, or other individual except a clerical or ministerial employee or other employee or associate designated by the administrator by rule or order as within the intent of this subsection, who is employed by or associated with either of the following:

(1) An investment adviser that is registered or required to be registered under this act and who does any of the following:

(i) Makes any recommendations or otherwise renders advice regarding securities.

(ii) Manages accounts or portfolios of clients.

(iii) Determines which recommendation or advice regarding securities should be given.

(iv) Solicits, offers, or negotiates for the sale of or sells investment advisory services.

(v) Supervises employees who perform any of the activities described in subparagraph (i), (ii), (iii), or (iv).

(2) A federally covered adviser that is subject to section 203A of title II of the investment advisers act of 1940, 15 U.S.C. 80b-3a, and is designated by the administrator by rule or order.

(n) "Investment advisers act of 1940" means the investment advisers act of 1940, title II of chapter 686, 54 Stat. 847, 15 U.S.C. 80b-1 to 80b-21.

(o) "Investment company act of 1940" means the investment company act of 1940, title I of chapter 686, 54 Stat. 789, 15 U.S.C. 80a-1 to 80a-3 and 80a-4 to 80a-64.

(p) "Issuer" means any person who issues or proposes to issue any security, except that:

(1) For certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

(2) For certificates of interest or participation in oil, gas, or mining titles or leases, or in payments out of production under titles or leases, the term "issuer" means the owner of the oil, gas, or mining titles or leases or payments out of production or any fractional part thereof who creates and sells certificates of interest or participation therein.

(q) "Nonissuer" means not directly or indirectly for the benefit of the issuer. A sale of securities shall be considered to be indirectly for the benefit of the issuer if all of the following conditions are met:

(1) The sale is directly or indirectly made for the benefit of a director or executive officer of the issuer, or a person occupying a similar status or performing similar functions, or a beneficial owner of 10% or more of any class of equity securities of the issuer.

(2) The sale, together with all sales made in this state by or for the benefit of the issuer during the 6-month period immediately before the date of the sale, otherwise than pursuant to a registration statement or exemption order under this act, exceeds 1% of the outstanding securities of the class of securities being sold.

(3) The securities are not of a class that has been designated by the administrator as eligible for trading in this state.

(r) "Notice filing" means the documents filed with the administrator under section 202a or 308, or both, as applicable.

(s) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(t) "Promoter" means a person who, acting alone or in conjunction with 1 or more persons, directly or indirectly takes the initiative in founding and organizing the business or enterprise of an issuer; or a person who, in connection with the founding or organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, 10% or more of the proceeds from the sale of any class of securities or 10% or more of the equity interest in the issuer after the offering is complete. However, a person who receives such an amount of securities or proceeds either solely as underwriting commissions pursuant to an offering of securities registered under this act or solely in consideration of property or legal or accounting services shall not be considered a promoter within the meaning of this subsection if the person does not otherwise take part in founding and organizing the enterprise.

(u) "Public utility holding company act of 1935" means the public utility holding company act of 1935, title I of chapter 687, 49 Stat. 838.

(v) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subdivision do not include:

(A) Any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock.

(B) Any act incident to a judicially approved reorganization in which a security is issued in exchange for 1 or more outstanding securities, claims, or property interests, or partly in exchange and partly for cash.

(w) "Securities act of 1933" means the securities act of 1933, title I of chapter 38, 48 Stat. 74, 15 U.S.C. 77a to 77r and 77s to 77aa.

(x) "Securities exchange act of 1934" means the securities exchange act of 1934, chapter 404, 48 Stat. 881.

(y) "Securities investor protection act of 1970" means the securities investor protection act of 1970, Public Law 91-598, 84 Stat. 1636.

(z) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" includes any contractual or quasi contractual arrangement pursuant to which: (1) a person furnishes capital, other than services, to an issuer; (2) a portion of that capital is subjected to the risks of the issuer's enterprise;

(3) the furnishing of that capital is induced by the representations of an issuer, promoter, or their affiliates which give rise to a reasonable understanding that a valuable tangible benefit will accrue to the person furnishing the capital as a result of the operation of the enterprise; (4) the person furnishing the capital does not intend to be actively involved in the management of the enterprise in a meaningful way; and (5) a promoter or its affiliates anticipate, at the time the capital is furnished, that financial gain may be realized as a result thereof. "Security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period or a commodity contract. The administrator may exclude by rule or by order other transactions or agreements from the definition of the word "security".

(aa) "Small business investment act of 1958" means the small business investment act of 1958, Public Law 85-699, 72 Stat. 689.

(bb) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 339, Imd. Eff. July 23, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1985, Act 120, Imd. Eff. July 31, 1985;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 of the Michigan Administrative Code.

451.802 Exempt securities and transactions; burden of proof; combining exempt offers or sales.

Sec. 402. (a) The following securities are exempted from sections 301 and 403:

(1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of 1 or more of the foregoing, or any certificate of deposit for any of the foregoing, or any guarantee or other obligation made in connection therewith.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any Canadian province, any agency or corporate or other instrumentality of 1 or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized and supervised under the laws of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any security issued or guaranteed by any federal credit union, any credit union organized and supervised under the laws of this state or any other state or territory of the United States, or any industrial loan association, or similar association organized and supervised under the laws of this state.

(6) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company that is a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act, or regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province. Also, any equipment trust certificate or equipment note or bond based on chattel mortgages, leases, or agreements for conditional sales of cars, motive power, or other rolling stock mortgages, leased or sold to or furnished for the use of or upon railroads, other common carriers, public utilities, or holding companies supervised by a governmental authority of the United States, a state, Canada, or a Canadian province, or equipment, notes, or bonds where the ownership or title of the equipment is pledged or retained in accordance with the provisions of the laws of the United States, a state, Canada, or a Canadian province, to secure the payment of the equipment trust certificates, bonds, or notes.

(7) Any security listed or approved for listing upon notice of issuance on the New York or American stock exchanges; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. The administrator may by rule exempt securities listed on other exchanges or may establish criteria for designating other classifications of exempt securities.

(8) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association. However, unless the securities are part of an issue having an aggregate sales price of \$250,000.00 or less, are sold only to bona fide members of the issuing

organization, and are sold without payment of a commission or consulting fee, the issuer shall do all of the following:

(A) Ten days before offer or sale of the security file with the administrator an offering circular in a form the administrator may by rule or order require together with a filing fee of \$50.00, and the administrator does not disallow the exemption.

(B) Not pay a commission or consulting fee to any person except a registered broker-dealer in connection with the offer or sale of the security.

(C) Sell only through registered securities broker-dealers or through persons exempted from the definition of the term "agent" by the administrator. In connection with all of the foregoing, the administrator may by rule or order withdraw or further condition this exemption, or waive the conditions contained in subparagraphs (A) and (B).

(9) Any prime quality negotiable commercial paper sold in an aggregate amount of not less than \$25,000.00 to any 1 purchaser which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash at a fixed date within 9 months of the date of issuance, exclusive of days of grace, or any nonautomatic renewal of the commercial paper which is likewise limited, or any guarantee of the commercial paper or of any such renewal if the commercial paper is sold through a registered broker-dealer or an institution whose securities are exempted under subsection (a)(3).

(10) Any investment contract or option issued in connection with an employees' stock purchase, option, savings, pension, profit sharing or similar benefit plan.

(11) A security listed or approved for listing upon notice of issuance on the national association of securities dealers automated quotation national market system and any other security of the same issuer that is of senior or substantially equal rank, a security called for by subscription rights or warrants so listed or approved, or a warrant or right to purchase or subscribe to any of the foregoing. The administrator may, after providing notice of hearing to all interested parties, opportunity for hearing, written findings of fact and conclusions of law, and a right to judicial appeal, do any of the following:

(A) Deny or revoke this exemption by order for a specific issue of securities.

(B) Deny this exemption by rule or order to a category of securities when necessary in the public interest and for the protection of investors.

(C) Decertify the system by order if the administrator determines that the system's requirements are so changed from those listed in securities act release no. 33-6810, 53 F.R. p. 52550 (Dec. 28, 1988), or insufficiently applied that the public interest and protection of investors contemplated by the requirements is no longer afforded.

(b) The following transactions are exempted from sections 301 and 403:

(1) An isolated nonissuer transaction, and with respect to a certificate of interest or participation in an oil, gas or mining title or a lease or payment out of production under a title or lease, any isolated transaction not involving an offer or sale by a promoter, whether effected through a broker-dealer or not.

(2) A nonissuer distribution of an outstanding security whose issuer and any predecessors have been in continuous operation for at least 5 years if a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years in the payment of principal, interest, or dividends on the security. For purposes of this subdivision, an issuer or predecessor is in continuous operation only if it has gross operating revenue in each of the 5 years immediately preceding its claim of exemption and has had gross operating revenue of at least \$500,000.00 in not less than 3 of those 5 years.

(3) A nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or a transaction among underwriters.

(5) A transaction not part of a series of transactions in related or adjacent properties to individual investors, or a transaction involving an offer or sale to a financial institution as described in subdivision (8), in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit.

(6) A transaction by an executor, a personal representative, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator.

(7) A bona fide pledge or transaction in foreclosure of a pledge executed by a bona fide pledgee without any purpose of evading this act.

(8) An offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, the federal national mortgage association, the federal home loan mortgage corporation, or the government national mortgage association, pension or profit sharing trust the assets of which are managed by an institutional manager, the treasurer of this state, other financial institution, broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity, or a lender approved by the federal housing administration and who has satisfied any additional requirements established by the administrator by rule or order.

(9) A transaction pursuant to an offering which satisfies in full each of the following requirements:

(A) The issuer and any person acting on its behalf shall exercise reasonable care to assure that purchasers in this state of the securities in the offering do not resell the securities without compliance with state and federal securities laws. For sales described in subparagraph (D)(2), (3), and (5) that reasonable care shall include, where appropriate, but not necessarily be limited to, all of the following:

(1) Making reasonable inquiry to determine if the purchaser is acquiring the securities for his or her own account or on behalf of other persons who may be considered as separate offerees or purchasers.

(2) Placing a legend on the certificate or other document evidencing the securities stating that the securities have not been registered under the act and setting forth or referring to the restrictions on transferability and sale of the securities.

(3) Issuing stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities or, if the issuer transfers its own securities, making a notation in the appropriate records of the issuer.

(4) Obtaining from the purchaser a signed agreement that the securities will not be sold without registration under the act or exemption therefrom.

(B) The securities are not offered or sold in reliance upon this subdivision by means of any general advertising or general solicitation, except as approved by the administrator.

(C) A commission is not paid or given directly or indirectly for soliciting any prospective purchaser in this state, except to a broker-dealer registered pursuant to this act who is not affiliated with the issuer or its affiliates. Those payments shall be reflected on the books and records of the broker-dealer, and shall be fully disclosed in writing to each prospective purchaser. The broker-dealer or issuer shall file with the administrator on forms as the administrator prescribes, a confidential report of offering within 30 days after initiation of the offering in this state and every 90 days thereafter until the final report of completion of the offering.

(D) Each sale in the offering made in reliance upon this subdivision meets all of the conditions of 1 of the following:

(1) The sale is to any of the following classes of persons:

(i) Promoters or other persons actively engaged or reasonably expected to be actively engaged in the management of the issuer, or in a professional capacity as attorneys or accountants to the issuer, or directly related by blood or marriage to the promoter or person actively engaged or reasonably expected to be actively engaged in the management of the issuer, if such persons are purchasing with investment intent and the issuer relies upon this subparagraph for sales to not more than 10 persons in this state within a 12-month period.

(ii) Not more than 15 persons whose principal business is the line of business to which the offering relates, and who are qualified by previous experience to evaluate the risks of the investment. The provisions of subparagraph (A) shall not apply to sales covered by subparagraph (D)(1) (i) and (ii).

(2) Sales to not more than 15 persons in this state within any 12-month period, in reliance upon this subparagraph, and the issuer provides to all such offerees at least 48 hours before sale a document that includes all of the following:

(i) Disclosing in reasonable detail the intended application of the proceeds to be received from the offering.

(ii) Disclosing in reasonable detail the current financial condition of the issuer and in the case of a limited partnership or oil and gas venture, the current financial condition of the general partner or oil and gas issuer; except that in the case of a limited partnership interest or interest in oil or gas, the document may merely state that the general partner or oil and gas issuer has a net worth, determined in accordance with generally accepted accounting principles, in excess of a stated sum, and that its net worth exceeds the obligations undertaken by the general partner or oil and gas issuer, and that the assets or operations of the general partner or oil and gas issuer will generate sufficient cash to meet these obligations as they come due.

(iii) Disclosing in all reasonable detail direct or indirect compensation or remuneration to be received by a promoter or affiliates of the promoter and fully identifying the persons who shall be recipients of that compensation.

(iv) Disclosing the form, date, and jurisdiction under which formed, and nature of business of the issuer.
(v) Disclosing the kind and amount of securities to be offered and the offering price or method by which the offering price is computed.

(vi) Stating, except in the case of a corporate issuer, that each investor or his or her designated representative may inspect the books and records of the issuer or the venture at any reasonable time for proper purposes.

(vii) Stating, except in the case of a corporate issuer, that the issuer shall promptly call an informational meeting of all investors upon request by 25% in interest or more of the investors in any class of securities who are unaffiliated with a promoter or affiliate of the promoter.

(viii) Stating, except in the case of a corporate issuer, that the issuer shall agree to maintain at its offices a list of names and addresses of all investors in the entity available to any investor or the designated representative of any investor.

(ix) Stating that the issuer shall provide all investors with a detailed written statement of the application of the proceeds of the offering within 6 months after commencement of the offering or upon completion, whichever occurs first, and with annual current balance sheets and income statements to investors thereafter.

(3) Sales to not more than 35 persons in this state within any 12-month period in reliance upon this subparagraph, if all of the following conditions are met:

(i) The offeror files with the administrator an exemption application, an offering circular, and a \$100.00 filing fee.

(ii) The administrator by order finds the offering consistent with section 306 and declares this exemption effective.

(iii) The offering is made upon conditions and with information or provisions in the offering circular as the administrator may require.

(iv) The offering circular is delivered to each purchaser at least 48 hours before the sale to the purchaser.

(4) Sales made by a person other than an issuer to not more than 10 persons pursuant to offers to not more than 15 persons in this state within a 12-month period in reliance upon this subparagraph, if the offering is not part of a distribution of the issuer's securities.

(5) Sales made to a person who the seller has reasonable grounds to believe and does believe is 1 of the following:

(i) A business entity having either net income from operations after taxes in excess of \$100,000.00 in its last fiscal year or its latest 12-month period, or a net worth in excess of \$1,000,000.00 at the time of purchase, and after the purchase has less than 10% of its total assets invested in the securities of the issuer.

(ii) An individual who after the purchase has an investment of \$50,000.00 or more in the securities of the issuer, including installment payments to be made within 1 year after purchase by the investor; has either personal income before taxes in excess of \$100,000.00 for his or her last fiscal year or latest 12-month period and is capable of bearing the economic risk, or net worth in excess of \$1,000,000.00; and has the knowledge and experience in financial and business matters that he or she is capable of evaluating the merits and risks of the prospective investment or has obtained the advice of an attorney, certified public accountant, investment adviser registered under the investment advisers act of 1940, or an investment adviser registered under this act, with respect to the merits and risks of the prospective investment.

(E) For purposes of this subparagraph:

(1) Each offer or sale made to a pension or profit sharing trust shall be considered to have been made to each beneficiary as an individual offeree unless all of the following apply:

(i) The trust has an independent trustee.

(ii) The issuer makes inquiry and reasonably believes that the trust invests not more than 10% of its assets in the securities sold by the issuer.

(iii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the trust was not formed to purchase the securities of the issuer.

(2) Each offer or sale made to a partnership or association shall be deemed to have been made to each partner or member as an individual unless both of the following occur:

(i) The issuer makes inquiry and reasonably believes that the partnership or association invests not more than 10% of its assets in the securities offered or sold by the issuer.

(ii) Within the 2-year period before the initial offer of the securities, the issuer was not directly or indirectly connected with the formation or subsequent operation of the partnership or association or solicitation of its investors and the issuer makes inquiry and reasonably believes that the partnership or association was not formed to purchase the securities of the issuer.

(3) Each offer or sale made to a corporation or business trust shall be considered to have been made to each security holder of the corporation or business trust as an individual unless within the 2-year period before the initial offer of the securities the issuer was not directly or indirectly connected with the formation or subsequent operation of the corporation or trust or solicitation of its investors and the issuer makes inquiry and reasonably believes that the corporation or trust, or in the case of a wholly owned subsidiary, its parent, was not formed to purchase the securities of the issuer and 1 of the following applies:

(i) A class of securities of the corporation or trust is registered pursuant to the securities exchange act of 1934.

(ii) The decision of the corporation or trust to acquire the shares of the issuer is directly or indirectly related to the business of the corporation or trust and not for investment purposes, and its principal business is not investing in securities.

(iii) The issuer makes inquiry and reasonably believes that the corporation or trust invests not more than 10% of its assets in the securities offered or sold by the issuer.

(4) An offer or sale to an investment company registered under the investment company act of 1940 constitutes an offer or sale to an individual.

(5) Husband, wife, and children living as a family are considered to be 1 individual.

(6) Each client of an investment adviser or federally covered adviser, each customer of a broker-dealer, or a person with a similar relationship shall be considered an offeree or purchaser for purposes of this subdivision regardless of the amount of discretion given to the investment adviser or federally covered adviser, broker-dealer, or other person to act on behalf of the client, customer, or trust.

(F) The administrator may by rule or order as to any security or transaction, or any type of security or transaction, increase the number of offerees or purchasers, waive any conditions, and in conjunction with a request to exercise its discretion under these provisions, the administrator may further condition this exemption.

(10) Any offer or sale of a preorganization certificate or subscription in a corporation, and the issuance of securities pursuant thereto, if all of the following apply:

(A) No commission is paid or given directly or indirectly for soliciting any prospective subscriber. The administrator may by rule or order waive this condition and require reports of sales under this exemption.

(B) There are not more than 10 purchasers.

(C) Advertising is not published or circulated unless it has been reviewed and no objection thereto is made by the administrator in writing.

(D) The seller reasonably believes that all the buyers in this state, other than those designated in subsection (b)(8), are purchasing for investment.

(11) A transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if either of the following occurs:

(A) A commission, other than a standby commission, is not paid or given directly or indirectly for soliciting any security holder in this state and the offer is made either to holders of the convertible securities or warrants and relates to the underlying security, or the securities are purchased by not more than 25 security holders in this state within a 12-month period.

(B) Twenty business days before any offer, the issuer files with the administrator the offering circular or other materials proposed to be sent to security holders and other persons describing the terms of the offer together with a filing fee of \$100.00 and the administrator does not by order disallow the exemption within the next 20 business days.

(12) An offer, but not a sale, of a security for which a registration statement or exemption order request was filed under this act if a stop order is not in effect and a public proceeding or examination looking toward a stop order is not pending and if made in compliance with section 307.

(13) An offer, sale, or issuance of securities pursuant to an investment contract or option which is exempt under subsection (a)(10).

(14) An offer or sale of a security as contemplated under the small business investment act of 1958 to the federal small business administration, or by a small business concern to a small business investment company or to a development company for equity capital provided or loans made, or by a small business investment company to a small business concern as a condition to providing the latter with equity capital or loans.

(15) An offer or sale of any security by a nonprofit development corporation, formed and existing under the laws of this state, if the primary purpose of the corporation is to promote and assist the growth and development of business enterprises in the area covered by its operations.

(16) The distribution by a cooperative corporation of its securities to its patrons as patronage refunds or returns distributed on a patronage basis.

(17) A nonissuer transaction effected by or through a broker-dealer in any outstanding security of the same class as that which has been designated by order by the administrator as eligible for trading in this state. A person requesting a designation order shall pay a filing fee of \$100.00.

(18) The sale of capital stock issued by a professional service corporation formed under the professional service corporation act, 1962 PA 192, MCL 450.221 to 450.235.

(19) A transaction incident to a class vote by shareholders pursuant to the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation.

(20) A transaction that the administrator by order exempts from the registration provisions of this act after a determination that registration is not necessary in the public interest and for the protection of investors. An order may be granted either before or after consummation of the transaction upon the petition of any interested party in the transaction.

(21) A transaction made pursuant to a uniform limited offering exemption filing with the administrator. A person claiming under this subdivision shall pay a filing fee of \$100.00 at the time of filing the initial notice form.

(c) In any proceeding under this act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) Offers or sales which are exempt under subsection (b)(1) through (20) may be combined to exempt an entire transaction or series of transactions.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1965, Act 322, Imd. Eff. July 22, 1965;—Am. 1968, Act 171, Eff. Nov. 15, 1968;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1987, Act 194, Imd. Eff. Dec. 2, 1987;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

451.803 Sales literature or advertising communication; filing and acceptance; exemption.

Sec. 403. The administrator may by rule or order require the filing and acceptance before use of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser or federally covered adviser, unless the security, or transaction is exempted by section 402(a)(1) to (7) or is a federally covered security. The administrator shall not, by rule or order under this section, require a federally covered adviser to file with the administrator any document that is not required to be filed with the securities and exchange commission under the investment advisers act of 1940.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.804 False or misleading statements unlawful.

Sec. 404. It is unlawful for any person to make or cause to be made, in any document filed with the administrator or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.805 Effect of registration, exemption, exception, or order; inconsistent representation prohibited.

Sec. 405. (a) Neither the fact that an application for registration under sections 201 to 204, a notice filing under section 202a or 308, or a registration statement under sections 301 to 306 has been filed, nor the fact that a person or security is effectively registered or a notice filing has been made, constitutes a finding by the administrator that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction, or that an order has been issued by the administrator, means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) A person shall not make, or cause to be made, to a prospective purchaser, customer, or client a representation inconsistent with subsection (a).

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.806 Administration of act; bureau as criminal justice agency; disclosures; privilege; joint investigations or inspections.

Sec. 406. (a) This act shall be administered by the administrator which is a criminal justice agency as defined in 28 C.F.R. 20.3(c).

(b) The administrator or any of its officers or employees shall not disclose to the public or use for personal benefit any information which is filed with or obtained by the administrator and which is not made public pursuant to this act. This act does not authorize the administrator or any of its officers or employees to disclose any information except among themselves or when necessary or appropriate in a proceeding or investigation under this act, or to federal, state, local, or foreign governmental agencies for their own official use. No provision of this act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or any of its officers or employees.

(c) The administrator may conduct joint investigations or inspections with federal, state, or local agencies, or self-regulatory bodies as defined in the securities exchange act of 1934.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.807 Powers of administrator; failure to obey subpoena; contempt; privilege against self-incrimination.

Sec. 407. (a) The administrator in its discretion:

(1) May make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this act or any rule or order hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder.

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated.

(3) May publish information concerning any violation of this act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this act, the administrator, or any officer designated by it, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the circuit court for the county of Ingham, upon application by the administrator, may issue to the person an order requiring him to appear before the administrator, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing any document or record before the administrator, or in obedience to the subpoena of the administrator, or any officer designated by it, or in any proceeding instituted by the administrator, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.808 Cease and desist order; injunction, restraining order, order requiring accounting or disgorgement, or writ of mandamus; appointment of receiver or conservator; bond not required; hearing; decision; order denying or revoking exemption; remedies; commencement of action or proceeding.

Sec. 408. (a) Whenever it appears to the administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this act or any rule or order hereunder, it may in its discretion issue a cease and desist order or bring an action in a circuit court to enjoin the acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, order requiring an accounting or disgorgement or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the administrator to post a bond.

(b) A person who has been ordered to cease and desist may file with the administrator within 15 days after service on him or her of the order a written request for a hearing. The administrator within 15 days after the filing shall issue a notice of hearing and set a date for the hearing. If a hearing is not requested by the person or is not ordered by the administrator within 15 days, the order will stand as entered. The administrator shall

hold the hearing in accordance with the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.328 of the Michigan Compiled Laws, and shall have all the powers granted thereunder. The administrator shall issue a decision sustaining, modifying, or dismissing the original order.

(c) The administrator, if it finds such action to be in the public interest and that any person has violated or is about to violate any provision of this act or any rule or order hereunder, may by order deny or revoke any exemption specified in section 402(a)(1), (6), (7), (8), (9), or (10) or section 402(b) with respect to a specific security, issuer or transaction, or a person's right to sell exempt securities or engage in exempt transactions in the future without compliance with the registration provisions of this act. The order shall list the individual exemptions revoked and the rationale for the revocation. An order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specific exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order the administrator shall promptly notify all interested parties that the order has been entered and the reasons therefor and that within 15 days after receipt of a written request the matter will be set down for hearing. If a hearing is not requested within 15 days and none is ordered by the administrator, the order will remain in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of an opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. An order under this subsection may operate retroactively. A person does not violate section 301 or 403 by reason of any offer or sale effected after the entry of an order under this subsection if that person sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the order.

(d) None of the remedies provided for in this act are mutually exclusive and the administrator in its discretion may use as many remedies as it deems necessary. The administrator in seeking a remedy shall consider the present actions and the possibility of future violations by the parties against whom proceedings are contemplated, together with actions taken to mitigate harm to the public. The administrator may impose a civil penalty of not more than \$1,000.00 for each violation of this act, not to exceed a total of \$10,000.00.

(e) The administrator shall not commence any action or proceeding under this act more than 6 years after the violation.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988.

Administrative rules: R 451.601.1 et seq. of the Michigan Administrative Code.

451.809 Violation; penalty; evidence; punishment for statutory or common law crime; filing criminal complaint or indictment.

Sec. 409. (a) Any person who willfully violates section 101, 102, 103, 201, 203(h), 301(1) or (2), 402, 405(b), or 406(b), or who engages in conduct prohibited by section 204(a)(1)(J) to (S) and (V) to (Z), or who willfully violates section 404 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$25,000.00 for each violation, or imprisoned not more than 10 years, or both.

(b) The administrator may refer such evidence as is available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this act.

(c) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

(d) Any criminal complaint or indictment for violation of this act shall be filed within 6 years after the commission of the offense, but any period during which the party charged was not usually and publicly resident within this state shall not be included as part of the 6 years.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1988, Act 408, Imd. Eff. Dec. 27, 1988;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.810 Offer or sale of security; liability; recovery; contribution; tender; survival of action; limitations; rescission offer; disclosure; suit based on contract; rights and remedies cumulative.

Sec. 410. (a) Any person who does either of the following is liable to the person buying the security from him or her and the buyer may sue either at law or in equity to recover the consideration paid for the security, together with interest at 6% per year from the date of payment, costs, and reasonable attorney fees, less the amount of income received on the security, upon the tender of the security or, if he or she no longer owns the security, for damages which shall be the amount that would be recoverable upon a tender less the value of the

security when the buyer disposed of it and interest at 6% per year from the date of disposition:

(1) Offers or sells a security in violation of section 201(a), 301, or 405(b), or of any rule or order under section 403 which requires the affirmative approval of sales literature before it is used, or of any condition imposed under section 304(d), 305(f), 305(g), or 412(g).

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, the buyer not knowing of the untruth or omission, and who does not sustain the burden of proof that he or she did not know, and in the exercise of reasonable care could not have known, of the untruth or omission.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of the seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the person sustains the burden of proof that he or she did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) A person may not bring an action under subsection (a)(1) more than 2 years after the contract of sale. A person may not bring an action under subsection (a)(2) more than 2 years after the person, in the exercise of reasonable care, knew or should have known of the untruth or omission, but in no event more than 4 years after the contract of sale. A person may not bring an action under this section if the buyer received a written rescission offer, before the action and at a time when he or she owned the security, to refund the consideration paid together with interest at 6% per year from the date of payment, less the amount of any income received on the security, and he or she failed to accept the offer within 30 days of its receipt, or if the buyer received the offer before the action and at a time when he or she did not own the security, unless he or she rejected the offer in writing within 30 days of its receipt. The documents making full written disclosure about the financial and business condition of the issuer and the financial and business risks associated with the retention of the securities shall be provided to the offeree concurrently with the written rescission offer. Such an offer shall not be made until 45 days after the date of sale of the securities and acceptance or rejection of the offer shall not be binding until 48 hours after receipt by the offeree. The rescission offer shall recite the provisions of this section. A rescission offer under this subsection shall not be valid unless the offeror substantiates that it has the ability to fund the offering and this information is set forth in the disclosure documents.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this act or any rule or order hereunder is void.

(h) The rights and remedies provided by this act are in addition to any other rights or remedies that may exist at law or in equity, but this act does not create any cause of action not specified in this section.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1984, Act 176, Imd. Eff. July 3, 1984;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.811 Administrator's orders; judicial review; findings of fact conclusive; additional evidence; stay of administrator's orders.

Sec. 411. (a) Any person aggrieved by a final order of the administrator may obtain a review of the order in the circuit court for the county of Ingham by filing in court, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the administrator, and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. The findings of the administrator as to the facts, if supported by competent, material and substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional material evidence, and shows to the satisfaction of the court that there were reasonable grounds for failure to adduce the evidence in the hearing before the administrator, the court may order the additional evidence to be taken before the administrator and to be adduced upon the hearing in such manner and upon such conditions as the court considers proper. The

administrator may modify its findings and order by reason of the additional evidence and shall file in court the additional evidence together with any modified or new findings or order.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.812 Rules, forms, and orders; making, amending, or rescinding; classification; financial statements; publication of rules and forms; applicability of provisions imposing liability; hearing; rules.

Sec. 412. (a) The administrator may from time to time make, amend, and rescind rules, forms, and orders as are necessary to carry out the provisions of this act, including rules and forms governing registration statements, notice filings under section 202a or 308, applications, and reports and defining any terms, whether or not used in this act, insofar as the definitions are not inconsistent with this act. For the purpose of rules and forms, the administrator may classify securities, persons, and matters within its jurisdiction and prescribe different requirements for different classes.

(b) A rule, form, or order may not be made, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms, the administrator may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) The administrator may by rule or order prescribe the form and content of financial statements required under this act, the circumstances under which consolidated financial statements shall be filed, and whether any required financial statements shall be certified by independent or certified public accountants. Financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) Rules and forms of the administrator shall be published.

(e) A provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the administrator, notwithstanding that the rule, form, or order may not later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public unless the administrator in its discretion grants a request joined in by all the respondents that the hearing be conducted privately.

(g) The administrator shall promulgate rules with respect to broker-dealers and agents as necessary or appropriate in the public interest or for the protection of investors. The rules may require, among other things, the promulgation and issuance of a disclosure statement by the broker-dealer, the segregation of customers' funds and assets, maintenance of reserves for obligations, contingent or otherwise, to customers, the maintenance of a fidelity bond, hedging or covering obligations to customers, the signing and filing of a consent to service of process, and prior approval of advertising, limitation of the content of advertising, and margin requirements.

(h) The rules promulgated and hearings held under this act shall be in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

Administrative rules: R 451.601.1 et seq. and R 451.2101 et seq. of the Michigan Administrative Code.

451.813 Filing of documents; register; retention and storage of information; public inspection; availability of information to public; certified reproductions; charges; reproduction as evidence; certificate of nonexistence; interpretive opinions; rules.

Sec. 413. (a) A document is filed when it is received by the administrator with the appropriate fee and all required forms.

(b) The administrator shall keep a register of all applications for registration, notice filings under sections 202a and 308, and registration statements that are or have ever been effective under this act and all denial, suspension, or revocation orders that have been entered under this act. The register shall be open for public inspection.

(c) The information contained in or filed with any registration statement, notice filing, application, or report may be retained and stored by the administrator in the document's original form or by reproduction pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403. Reproductions of any registration statement, application, or report may be made available to the public under rules prescribed by the

administrator, except that the administrator may withhold from public inspection information, the disclosure of which is not necessary in the public interest and for the protection of investors.

(d) Upon request and for a reasonable charge as he or she prescribes, the administrator shall furnish to any person a reproduction pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, certified under his or her seal of office if requested, of an entry in the register or any document that is a matter of public record. The charges made shall constitute reimbursement to the administrator for the cost of reproduction. In a proceeding or prosecution under this act, a certified reproduction in a medium pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, or a certified reproduction consisting of a printout or other output readable by sight from a medium pursuant to the records media act, 1992 PA 116, MCL 24.401 to 24.403, is prima facie evidence of the contents of the entry or document certified.

(e) The administrator may certify the nonexistence of a filing for a document that this act permits to be filed with the administrator, upon certification that the document is of a type that, if filed, are filed with the administrator and that a personal search of the records has been made by the person making the certification. A certificate of nonexistence is prima facie evidence that the document has not been filed with the administrator.

(f) The administrator in his or her discretion may honor a request from an interested person for an interpretative opinion or no action position and may promulgate rules that set forth the procedure for requesting an opinion or no action position.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1978, Act 481, Eff. Mar. 30, 1979;—Am. 1990, Act 150, Eff. Nov. 30, 1990;—Am. 1992, Act 207, Imd. Eff. Oct. 5, 1992;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.814 Provisions applicable to offer to sell or buy; what constitutes making or accepting offer to sell or buy; filing irrevocable consent; administrator or successor as attorney to receive service of process; effecting service of process; prohibited conduct as equivalent to appointment of administrator or successor as attorney; continuance.

Sec. 414. (a) Sections 101, 201(a), 301, 405, and 410 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.

(b) Sections 101, 201(a), and 405 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state, or is directed by the offeror to this state and received at the place to which it is directed or at any post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at any post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his or her behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than 2/3 of its circulation outside this state during the past 12 months, or a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201(c), as well as section 405 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this act, every person submitting a notice filing under section 202a or 308, and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the administrator, in a form as the administrator by rule prescribes, an irrevocable consent appointing the administrator or its successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by it, promptly sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her last address on file with the administrator, and the plaintiff's affidavit of compliance

with this subsection is filed in the case on or before the return day of the process, if any, or within a further time that the court allows.

(h) When a person, including a nonresident of this state, engages in conduct prohibited or made actionable by this act or any rule or order hereunder, and he or she has not filed a consent to service of process under subsection (g) and personal jurisdiction over him or her cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his or her appointment of the administrator or its successor in office to be his or her attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or her or his or her successor executor or administrator which grows out of that conduct and which is brought under this act or any rule or order hereunder, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in the office of the administrator, and it is not effective unless the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by it, promptly sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within a further time that the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before it, shall order a continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 1975, Act 31, Imd. Eff. May 1, 1975;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.815 Construction of act.

Sec. 415. This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this act with the related federal regulation.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.816 Uniform securities act; short title.

Sec. 416. This act shall be known and may be cited as the “uniform securities act”.

History: 1964, Act 265, Eff. Jan. 1, 1965.

451.817 Saving clause; repeal of §§ 451.101 to 451.133; effect of prior law; effect of prior law on certain offers or sales; judicial review of administrative orders.

Sec. 417. Except as saved in this section:

(a) Act No. 220 of the Public Acts of 1923, as amended, being sections 451.101 to 451.133 of the Compiled Laws of 1948, is repealed.

(b) Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this act, except that no civil suit or action may be maintained to enforce any liability under prior law unless brought within a period of limitation which applied when the cause of action accrued and in any event within 2 years after the effective date of this act.

(c) All effective registrations under prior law, all administrative orders relating to effective registrations under prior law, all conditions imposed upon effective registrations under prior law, and all notice filings made with the administrator since enactment of the national securities markets improvements act of 1996, Public Law 104-290, 110 Stat. 3416, remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to have been filed, entered, or imposed under this act, but are governed by prior law.

(d) Prior law applies in respect of any offer or sale made within 1 year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

(e) Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by section 411, except that no review proceeding may be instituted unless the petition is filed within any period of limitation which applied to a review proceeding when the order was entered and in any event within 60 days after the effective date of this act.

History: 1964, Act 265, Eff. Jan. 1, 1965;—Am. 2000, Act 494, Imd. Eff. Jan. 11, 2001.

451.818 Effective date of act.

Sec. 418. This act shall take effect on January 1, 1965.

History: 1964, Act 265, Eff. Jan. 1, 1965.

TAKE-OVER OFFERS
Act 179 of 1976

451.901-451.917 Repealed. 1988, Act 58, Eff. Apr. 1, 1988.

UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT
Act 157 of 1976

AN ACT to establish guidelines for the management and use of investments held by eleemosynary institutions and funds.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

The People of the State of Michigan enact:

451.1201 Short title.

Sec. 1. This act shall be known and may be cited as the “uniform management of institutional funds act”.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1202 Definitions.

Sec. 2. As used in this act:

(a) “Endowment fund” means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument.

(b) “Gift instrument” means a will, deed, grant, conveyance, agreement memorandum, writing, or other governing document, including the terms of any institutional solicitations from which an institutional fund resulted, under which property is transferred to or held by an institution as an institutional fund.

(c) “Governing board” means the body responsible for the management of an institution or of an institutional fund.

(d) “Historic dollar value” means the aggregate fair value in dollars of an endowment fund at the time it became an endowment fund, each subsequent donation to the fund at the time it is made, and each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(e) “Institution” means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes.

(f) “Institutional fund” means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include a fund held for an institution by a trustee that is not an institution or a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1203 Appropriation of net appreciation for expenditure.

Sec. 3. The governing board may appropriate for expenditure for the uses and purposes for which an endowment fund is established so much of the net appreciation, realized and unrealized, in the fair value of the assets of an endowment fund over the historic dollar value of the fund as is prudent under the standard established by section 7. This section does not limit the authority of the governing board to expend funds as permitted under other law, the terms of the applicable gift instrument, or the charter of the institution.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1204 Restriction on expenditure of net appreciation.

Sec. 4. Section 3 does not apply if the applicable gift instrument indicates the donor's intention that net appreciation shall not be expended. A restriction upon the expenditure of net appreciation may not be implied from a designation of a gift as an endowment, or from a direction or authorization in the applicable gift instrument to use only income, interest, dividends, or rents, issues or profits, or to preserve the principal intact, or a direction which contains other words of similar import. This rule of construction applies to gift instruments executed or in effect before or after the effective date of this act.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1205 Powers of governing board generally.

Sec. 5. In addition to an investment otherwise authorized by law or by the applicable gift instrument, and without restriction to the type of investments a fiduciary may make, the governing board, subject to specific limitations set forth in the applicable gift instrument or in the applicable law other than the law relating to investments by a fiduciary, may:

(a) Invest and reinvest an institutional fund in real or personal property deemed advisable by the governing board, whether or not it produces a current return, including mortgages, stocks, bonds, debentures, and other securities of profit or nonprofit corporations, shares in or obligations of associations, partnerships, or individuals, and obligations of any government, or subdivision, or instrumentality thereof.

(b) Retain property contributed by a donor to an institutional fund for as long as the governing board deems advisable.

(c) Include all or any part of an institutional fund in a pooled or common fund maintained by the institution.

(d) Invest all or any part of an institutional fund in any other pooled or common fund available for investment, including shares or interest in regulated investment companies, mutual funds, common trust funds, investment partnerships, real estate investment trusts, or similar organizations in which funds are commingled and investment determinations are made by persons other than the governing board.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1206 Additional powers of governing board.

Sec. 6. Except as otherwise provided by the applicable gift instrument or by the applicable law relating to governmental institutions or funds, the governing board may:

(a) Delegate to its committees, officers, or employees of the institution or the fund, or agents, including investment counsel, the authority to act in place of the board in investment and reinvestment of institutional funds.

(b) Contract with independent investment advisors, investment counsel or managers, banks, or trust companies to act in place of the board in investment and reinvestment of institutional funds.

(c) Authorize the payment of compensation for investment advisory or management services.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1207 Governing board to exercise ordinary business care and prudence.

Sec. 7. (1) In the administration of the powers to appropriate appreciation, to make and retain investments, and to delegate investment management of institutional funds, members of a governing board shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision. Persons to whom the governing board has delegated authority, or with whom the governing board has contracted, to act in its place in investment and reinvestment of institutional funds shall exercise ordinary business care and prudence under the facts and circumstances prevailing at the time of the action or decision.

(2) In exercising ordinary business care and prudence pursuant to subsection (1), the governing board or person to whom investment or reinvestment authority is delegated or with whom such authority is contracted shall consider the long- and short-term needs of the institution in carrying out its educational, religious, charitable, or other eleemosynary purposes, its present and anticipated financial requirements, expected total return on its investments, price level trends, and general economic conditions.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1208 Release of restriction imposed by gift instrument.

Sec. 8. (1) With the written consent of the donor, the governing board may release, in whole or in part, a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund.

(2) If written consent of the donor cannot be obtained by reason of his death, disability or legal incapacity, unavailability, or impossibility of identification, the governing board may apply in the name of the institution to a court of competent jurisdiction for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate, or impracticable, it may by order release the restriction in whole or in part. A release under this subsection shall not change an endowment fund to a fund that is not an endowment fund.

(3) A release under this section shall not allow a fund to be used for purposes other than the educational, religious, charitable, or other eleemosynary purposes of the institution affected.

(4) This section does not limit the application of the doctrine of cy pres.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1209 Application and construction of act.

Sec. 9. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

History: 1976, Act 157, Imd. Eff. June 17, 1976.

451.1210 Institution not prevented from making investment or guaranteeing obligations of others.

Sec. 10. This act shall not be construed to prevent an institution otherwise authorized by the terms of the applicable gift instrument establishing an endowment fund, or not prohibited by the terms of the applicable gift instrument establishing an institutional fund which is not an endowment fund, from making an investment or guaranteeing the obligations of others to further the educational, religious, charitable, or other eleemosynary purpose of the institution, regardless of whether any financial return is anticipated or any capital gain or loss is actually incurred.

History: 1976, Act 157, Imd. Eff. June 17, 1976.